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HEADQUARTERS EIGHTH ARMY
United States Army
Office of the Staff Judge Advocate

Yokohama, Japan
8 April 1949

UNITED STATES OF AMERICA VS TOSHIO HATAKAYAMA

Review of the Staff Judge Advocate

1. The attached record of trial of the case of Toshio Hatakayama at Yokohama, Japan, from 4 March 1948 to 24 March 1948, by a Military Commission appointed by paragraph 2, Special Orders Number 46, Headquarters Eighth Army, dated 27 February 1948, having been referred to the Staff Judge Advocate, this review thereof is submitted to the Commanding General.

Personal Data Concerning Accused

NAME: Toshio Hatakayama	DATE OF CONFINEMENT: 31 January 1946
AGE: 61	DATE OF ARRAIGNMENT: 4 March 1948
RESIDENCE: 12 Hara-Machi, Koishikawa, Bunkyo-ku, Tokyo	PLACE OF TRIAL: Yokohama, Japan
MARITAL STATUS: Married, one child	PERIOD OF TRIAL: 4 March 1948 to 24 March 1948
RELATIVES: Mother, 1 brother, 2 sisters	DATE OF SENTENCE: 24 March 1948
EDUCATION: Military Officer's School	SENTENCE: CHL for twelve (12) years
VOCATION: Professional Soldier	CLLEMENCY RECOMMENDED BY COMMISSION: No
MILITARY CAREER: Graduated Military Academy, 1910; resigned by age limit, 1 March 1944; recalled, 2 March 1944; Rank - Colonel	

2. Synopsis of Charge, Pleas, Findings, and Legal Sufficiency:

<u>Charge and Specifications:</u>	<u>Pleas</u>	<u>Findings</u>	<u>Legally Sustained</u>
Charge: Accused at the times and places set forth in the specifications hereto attached, and during a time of war between the United States of America, its Allies and Dependencies, and Japan, did violate the Laws and Customs of War.	NG	G	Yes
Spec. 1: That between 20 December 1942 and 3 March 1944, at or near Hakodate Main Prisoner of War Camp, Hakodate, Hokkaido, Japan, the accused did unlawfully disregard and fail to discharge his duty as Commander of said Camp, by failing to provide and maintain for American and Allied Prisoners of War adequate and available medical supplies and proper medical care and attention, thereby contributing to their suffering, illness and death.	NG	G, except the words, "and maintain", and the words "adequate and" and the words "contributing to their suffering, illness and death", substituting therefor the words "aggravating their suffering and illness". Of the excepted words, Not Guilty; of the substituted words, Guilty.	Yes, in part

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Spec. 2: That between 20 December 1942 and 3 March 1944, at or near Hakodate Main Prisoner of War Camp, Hakodate, Hokkaido, Japan, the accused did unlawfully disregard and fail to discharge his duty as Commander of said Camp by failing and neglecting to provide for American and Allied Prisoners of War adequate quarters, heat and bathing facilities and food and clothing, thereby causing them illness and suffering.

NG

G,
"except the words 'and
bathing facilities'".
Of the excepted words:
Not Guilty.

Yes,
in part

Spec. 3: That between 20 December 1942 and 3 March 1944, at or near Hakodate Main Prisoner of War Camp, Hakodate, Hokkaido, Japan, the accused did unlawfully disregard and fail to discharge his duty as Commander of said Camp to control and restrain members of his command and persons under his supervision and control by permitting them to commit the following acts, atrocities and other offenses against American and Allied Prisoners of War.

NG

Spec. 3a: In or about January 1943, the unlawful failure and neglect of Shigeru Aona, then medical officer of said camp, to render proper medical treatment to Henry Elliot, a British Prisoner of War, thereby contributing to his death.

NG

NG
(R 199)

Spec. 3b: Between 4 January 1943 and 3 March 1944, the unlawful mistreatment by Seichi Yutani of numerous Allied Prisoners of War by beating and otherwise abusing them.

NG

G

Yes

Spec. 3c: Between 4 January 1943 and 3 March 1944, the unlawful mistreatment by Terukichi Saito of numerous Allied Prisoners of War by beating and otherwise abusing them.

NG

G

Yes

Spec 3d: Between 11 January 1943 and 3 March 1944, the unlawful mistreatment by Shooichi Sasaki of numerous Allied Prisoners of War by beating and otherwise abusing them.

NG

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Yes

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Spec 3e: Between 1 February 1943 and 1 October 1943, the unlawful mistreatment by Matsuzo Miumi of numerous Allied Prisoners of War by beating and otherwise abusing them.

NG

G

Yes

Spec 3f: Between 29 March 1943 and 3 March 1944, the unlawful mistreatment by Kiyomoi Imai of numerous Allied Prisoners of War by beating and otherwise abusing them.

NG

G

Yes

Spec 3g: Between 31 August 1943 and 3 March 1944, the unlawful mistreatment by Kiyomatsu Suda of numerous Allied Prisoners of War by beating and otherwise abusing them.

NG

G

Yes

Spec 3h: Between 1 September 1943 and 3 March 1944, the unlawful mistreatment by Tsutomo Shiba of numerous Allied Prisoners of War by beating and otherwise abusing them.

NG

G

Yes

Spec 3i: Between October 1943 and March 1944, the unlawful mistreatment by Nobuhiro Miyakawa of numerous American and Allied Prisoners of War by beating and otherwise abusing them.

NG

G

Yes

Spec 3j: Between 20 December 1942 and 3 March 1944, the unlawful mistreatment of numerous American and Allied Prisoners of War, other than as set forth in sub-specifications 3a through 3i, inclusive, by beating and otherwise abusing them.

NG

G

Yes

Spec 4: That between 20 December 1942 and 3 March 1944, at or near Hakodate Area Prisoner of War Camps, Hokkaido, Japan, the accused did unlawfully disregard and fail to discharge his duty as Commandant of said Camps by failing to provide and maintain for American and Allied Prisoners of War adequate and available medical supplies and proper medical care and attention, thereby contributing to the suffering, illness and deaths of said Prisoners.

NG

G,

Yes

except the words "Hokkaido Japan", substituting therefor the words "Japan, other than the main camp"; except the words "and maintain" and the words "adequate and available medical supplies"; and except the words "contributing to the suffering, illness and death", substituting therefor the words "aggravating the suffering and illness". Of the excepted words, Not Guilty; of the substituted words, Guilty. (R 179, 188, 199, 449).

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Spec. 5: That between 20 December 1942 and 3 March 1944, at or near Hakodate Area Prisoner of War Camps, Hokkaido, Japan, the accused did unlawfully disregard and fail to discharge his duty as Commandant of said Camps by failing to provide and maintain for the Allied Prisoners of War adequate quarters, heat and bathing facilities and food and clothing, thereby causing the illness and suffering of numerous American and Allied Prisoners of War.

NG

G, Yes,
except the words "Hokkaido in part Japan", substituting therefor the words "Japan, other than the main camp"; except the words "and bathing facilities". Of the excepted words, Not Guilty; of the substituted words, Guilty.

Spec. 6: That between 20 December 1942 and 3 March 1944, at the Hakodate Area Prisoner of War Camps, Hokkaido, Japan, the accused did unlawfully disregard and fail to discharge his duty as Commandant of said Camps, to control and restrain members of his command and persons under his supervision and control, by permitting them to commit the following atrocities and other offenses against American and Allied Prisoners of War:

NG

G, Yes
except the words "Hokkaido, Japan", substituting therefor the words "Japan, other than the main camp". Of the excepted words, Not Guilty; of the substituted words, Guilty.

Spec. 6a: In or about December 1943, at Branch Camp Number 2, Kamiiso, Hokkaido, Japan, the unlawful mistreatment by Suekichi Sato and Momochi Moriyama of Raymond Fallows, a British Prisoner of War, by beating and otherwise abusing him, thereby contributing to his death on the third day of December 1943.

NG

G, Yes
except the words "thereby contributing to his death on the third day of December 1943". Of the excepted words, Not Guilty. (R 199, 450).

Spec. 6b: On or about 23 December 1943, at Branch Camp Number 1, Murroran, Hokkaido, Japan, the unlawful mistreatment by Kaichi Hirate of Raymond Suttle, a British Prisoner of War, by beating and otherwise abusing him, thereby contributing to his death on the 23rd day of December 1943.

NG

G

Yes

Spec. 6c: On or about 3 January 1944, at Branch Camp Number 1, Murroran, Hokkaido, Japan, the unlawful mistreatment by Kunichi Araki of Ernest Glover, a British Prisoner of War, by beating and otherwise abusing him, thereby contributing to his death on the 3rd day of January 1944.

NG

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Yes

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Spec. 6d: Between 20 December 1942 and 3 March 1944, at Branch Camp Number 1, Murroran, Hokkaido, Japan, the unlawful mistreatment by Kaichi Hirate of numerous American and Allied Prisoners of War not hereinabove specified by beating and otherwise abusing them. NG G Yes

Spec. 6e: Between 20 March 1943 and 3 March 1944, at Branch Camp Number 1, Murroran, Hokkaido, Japan, the unlawful mistreatment by Kunichi Araki, of numerous American and Allied Prisoners of War not hereinabove specified by beating and otherwise abusing them. NG G Yes

Spec. 6f: Between 20 December 1942 and 3 March 1944, at Branch Camp Number 1, Murroran, Hokkaido, Japan, the unlawful mistreatment by Eiji Asari of numerous American and Allied Prisoners of War by beating and otherwise abusing them. NG G Yes

Spec. 6g: Between 1 February 1943 and 3 March 1944, at Branch Camp Number 1, Murroran, Hokkaido, Japan, the unlawful mistreatment by Toshio Takeshita of numerous American and Allied Prisoners of War by beating and otherwise abusing them. NG G Yes

Spec. 6h: Between 6 November 1943 and 1 March 1944, at Branch Camp Number 1, Murroran, Hokkaido, Japan, the unlawful mistreatment by Shigeru Nishioka, of numerous American and Allied Prisoners of War by beating and otherwise abusing them. NG G Yes

Spec. 6i: Between 20 September 1943 and 3 March 1944, at Branch Camp Number 1, Murroran, Hokkaido, Japan, the unlawful mistreatment by Sadao Watanabe of numerous American and Allied Prisoners of War by beating and otherwise abusing them. NG G Yes

Spec. 6j: Between 1 October 1943 and 3 March 1944, at Branch Camp Number 2, Kamiiso, Hokkaido, Japan, the unlawful mistreatment by Matsuzo Miumi of numerous American and Allied Prisoners of War by beating and otherwise abusing them. NG NG

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Spec. 6k: Between 1 June 1943 and 3 March 1944, at or near Branch Camp Number 2, Kamiiso, Hokkaido, Japan, the unlawful mistreatment by Momoichi Moriyama of numerous American and Allied Prisoners of War by beating and otherwise abusing them.

NG

G

Yes

Spec. 6l: Between 20 December 1942 and 30 December 1943, at Branch Camp Number 2, Kamiiso, Hokkaido, Japan, the unlawful mistreatment by Suekichi Sato of numerous American and Allied Prisoners of War, by beating and otherwise abusing them.

NG

NG

Spec. 6m: Between 20 December 1942 and 3 March 1944, at the Hakodate Area Prisoner of War Camps, Hokkaido, Japan, the unlawful mistreatment of numerous Allied Prisoners of War, other than as set forth in specifications 6a through 6l, inclusive, by beating and otherwise abusing them.

NG

G

Yes

except the words "Hokkaido, Japan", substituting therefor the words "Japan other than the main camp". Of the excepted words: Not Guilty; of the substituted words, Guilty.

3. Summary of the Evidence:

a. For the Prosecution:

General: The accused was identified as Toshio Hatakayama, High Commandant of the Hakodate Prisoner of War Camps in the Hakodate area from 20 December 1942 to 3 March 1944, and also as commander of the Hakodate Main Camp for the same period (Ex. 1, 1a, 3, 4, 5, 6, 7, 11, 15, 16, 18, 19, 20, 21, 25). The POW Camps in the Hakodate Area are as follows: Main Camp Hokkaido, established 1 December 1942; No. 1 Branch Camp Murroran, established 1 December 1942; No. 2 Branch Camp, Iwate-ken, Kamihei-gun, Katsushi-mura, established 30 November 1942; No. 3 Branch Camp, Kamaishi-shi, Oaza, established 10 November 1943; No. 1 Dispatch Camp Hokkaido Kamiiso, established 1 October 1943; No. 1 Detached Camp, Yakumo, established 16 June 1943 (Ex. 2).

As to Specification 1: The accused aggravated the suffering and illness of American and Allied Prisoners of War by:

(1) Failure to provide available medical supplies. There were no medical supplies distributed in this camp. There was reason to believe that they were locked in the doctor's room and that when they requested them of him he pretended he had none (Ex. A, p 2). It was said Red Cross packages arrived but were not issued to the men (Ex 95). Dr. Aona took all Red Cross medical supplies, as well as those captured in possession of PW's, and locked them up, using them only for Japanese (Hooper, Ex. 119). The same witness made the statement that he was a PW at Hokodate Main Camp from the first part of June 1943 until liberated on 15 September 1945 and that they received three Red Cross packages during his stay there. It was his opinion that the MP's didn't keep any Red Cross supplies for their own use, and as well as he remembered, the three times that they received the Red Cross parcels were the only times that Red Cross parcels were brought in the camp (Ex. 120, p 1; Ex. 7, 14).

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(2) Failure to provide proper medical care and treatment. In Hakodate Main Camp there was gross overcrowding (Ex. 1-A). Sanitation in the camp was very bad, causing spread of disease (Ex 1-A and 16). Most of the PW's were suffering from scabies, dysentery and diarrhea (Ex. 1-A, 2-A, 71). Japanese doctors gave the men no treatment for these diseases, nor did they treat them very often for any sickness (Ex. 1-A, 3, 4, 16, 27-p 2, 34, 55, 79, 85, 104, 106, 111, 119, 133, 137). As a result of this lack of treatment, many PW's died (Ex. 1-A, 4, 55, 85, 104, 106, 111, 120, 133). Medical parade was held each morning at which the Camp Commander, Colonel Hatakayama, attended (Ex. 1-A). Many PW's reported themselves sick but were not allowed to stay in camp (Ex 1-A). Japanese doctors sent many sick PW's to work without medical treatment (Ex. 1-A, 111, 120). Japanese doctors, upon seeing a dangerously sick patient would remark, "I think you will die tonight", (Ex 1-A, 7-p 2, 106) and would render no treatment. On numerous occasions Japanese doctors made the statement that they were killing more enemies at the prison camp than at the front (Ex. 7-p 2, 10, 55, 104). They also stated they had rather see prisoners die than be bothered with treating them (Ex. 4). Japanese doctors, together with medical orderlies, beat the sick prisoners because they asked for aid or because they could not work (Ex. 3, 4, 20, 27-p 2, 56, 106, 126), and at times beat them while they (the doctors) were drunk (Ex. 20, 142). Operations were performed without the use of any anesthetic (Ex. 55). At times surgery was left to the PW medical orderlies (Ex. 106). Medical supplies were short (Ex. 1-A, 3, 16, 31, 95, 106). PW's had sores on their bodies which needed treatment. No new bandages and gauze were available for such treatment and the PW's had to wash the old bandages and re-use them (Ex. 16). Sick PW's were made to stand outside in the cold at attention for periods of twelve hours or more (Ex. 3). Sick PW's had to be carried to the latrine, which was outside, even though some had pneumonia (Ex. 34, p 3). Sick men were put in small rooms with no fire (Ex. 104). When on the sick list and unable to work, the food allowance of sick PW's was cut (Ex. 142). Hospital facilities were totally inadequate (Ex. 1-A and 88).

Colonel Emoto, a witness for the prosecution, stated that he was the former high commander of the Hakodate POW camps from 2 March 1944 to April 1945 (R 113). He held the rank of Lieutenant Colonel (R 113). He stated that the high commandant could control all existing supervision over the medical officers attached to the camp. He stated that after receiving information from the PW's, he was not satisfied with Lieutenant Shiba's duties. He received this information from an American Major (R 142). After receiving this information, he told Shiba not to ever come to the camp and never to drink Japanese sake under any circumstances. He requested that Doctor Shiba be dismissed, but the Northern Army Headquarters did not dismiss him until November or December 1944 (R 142). Upon assuming command in 1944, he spoke to the PW officers concerning medical affairs. When he arrived at the Hakodate Main Camp, he heard complaints about the shortage of medical supplies at Hakodate and the other camps (R 143). He thought he checked requisitions for medical supplies for the camp (R 143). He did not follow the high commandant's system of distribution of medicine. After receiving complaints from the PW's about the shortage of medicine, he carried out their requests (R 143). Shortly after his arrival, he made an inspection of Hakodate and the other camps and found evidence of a shortage of medicine and poor medical treatment. He talked to Major Murray, who told him about the necessity of improvement in this camp. He did not remember how he increased the medical supply, but he thought he increased it according to the demands of the PW's (R 143). He followed Major Murray's recommendations that the PW's get medicine after roll call. Formerly after roll call the Japanese orderlies did not give any medicine. He created a new system to allow PW's to get medicine after being examined. All PW's were able to be examined by the doctor and get medicine (R 143). He did not know who created the system of withholding medicine from the PW's (R 143). He stated that Major Murray told him that no medicine was given after roll call, that the Japanese orderlies had the key and no one was allowed to get medicine (R 143). He instructed Lieutenant Shiba to change the system as regards the issuance of medicine. He stated that they did not have plenty of medicine, but medicine was given to them, and he thought that by making the maximum use of it he could meet the demands of the PW's (R 143).

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He did not remember what portion of requisitions for medicine was filled each month. He ordered that badges be placed on PW's who were weak so that they could receive special care (R 154).

When he visited workshops in PW camps, he did not see any evidence of withholding medicine and medical attention, but when he visited Murroran Camp for the first time, Major Murray told him that medical supplies were not given plentifully. Also Major Murray complained of other matters. As a result of his visit to Murroran, he ordered that medicines be distributed according to his new orders and that the key should not be held by the medical orderlies after roll call (R 155). He heard from Major Murray, and also from Captain Hirate, Branch Commandant under Colonel Hatakayama, that Japanese orderlies had supreme authority as regards treatment and issuance of medicine to sick PW's. He found this to be true (R 155). He told Lieutenant Shiba if PW doctors state that men are not able to go to work agree entirely with them. As a result of his new system he was criticized by the work leaders, the MP commander, staff officers and others in the Northern Army Headquarters for his good treatment of PW's. (R 159). He told Lieutenant Hirate and Lieutenant Shiba that in order to save their face they could act as if they had authority in medical matters, but never go contrary to the opinions expressed by the PW (R 161). The PW doctor would decide whether sick prisoners should or should not be sent to work. If that is the PW doctor's decision, they must be allowed to remain in camp (R 161). He advised them never to go contrary to the PW doctor's opinion unless it was a special case, and in those special cases there might be a change after Lieutenant Shiba had reported the situation to him (R 161). He stated that company doctors administered to the medical needs of PW's at Murroran Camp (R 163). The company doctor made several appearances at this camp but they could not be relied upon (R 163). He did not remember any exact time that company doctors came to Murroran camp (R 163). He did not place any reliance upon Japanese civilian doctors. He did not think he violated regulations by allowing enemy medical officers to decide the care and treatment of PW's because in his opinion Japanese medical orderlies did not understand medical matters (R 163). He issued orders that medical orderlies should never go against the opinion of PW doctors concerning medical matters (R 163). Before his arrival many PW's died, and it was necessary to alleviate deaths. He saw that he could not rely upon the opinion of the Branch Commandant or medical orderlies who knew nothing about medical affairs, so he told them to adopt the opinion of experts (R 166). Formerly, camp commandant and orderlies were deciding everything and many died. His idea was to stress the number of deaths and not regulations (R 166). He was acquainted with the regulation that stated that enemy officers can only assist in medical affairs in a POW camp (R 168).

As to Specification 2: The accused caused illness and suffering to American and Allied PW's by:

(1) Failing and neglecting to provide adequate quarters. The quarters at the Hakodate Main Camp consisted of wooden huts, each of which housed 150 men (Ex. 5; 15 p 1); 100 men (Ex. 7); 60 men (Ex. 95); 8 men to one room about ten feet square (Ex. 148); 6 men per room, 4 yards by 3 yards (Ex. 30); 16 men to the bunk (Ex. 95); each man had about 3 feet of space (Ex. 7). Huts were overcrowded (Ex. 1-A; 15 p 1). Whenever it rained, which was frequent during the winter months, rain poured through the roofs of the huts and it was impossible to keep dry (Ex. 15, p 1). PW's slept on straw mats, placed on the floor (Ex. 5, 16, 148); mats were placed against each other with no space between mats. Consequently men were sleeping in close proximity to each other (Ex. 16). Colds and influenza were spread quickly (Ex. 16). Living and sanitary conditions were bad (Ex. 1-A; 15, p 1; 16). Lavatories in the hospital consisted of an open trench within the hospital building and as the weather was warm, flies were numerous and abominable and the stench was very foul. The overflow from the lavatory trench at the hospital was allowed to flow in an open drain through the camp (Ex. 1-A). Fleas and lice in the camp were almost unbearable (Ex. 16, 95). The WC was closed in next to the men's sleeping quarters (Ex. 16). Flies crowded around the lavatory (Ex. 16).

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The WC was of the dry variety with no running water (Ex. 16). Lavatories consisted of two earth closets (Ex. 148). Sanitary conditions were fair from a Japanese standpoint (Ex. 5). Conditions in the Main Camp were fair (Ex. 55). Each PW was issued five blankets (Ex. 5, 16); three blankets, which were insufficient (Ex. 148). Blankets were never cleaned except upon arrival (Ex. 95). Almost every man in the camp suffered from scabies and all were verminous. Prisoners were emaciated from diarrhea and dysentery (Ex. 1-A).

Colonel Emoto, a witness for the prosecution, stated that he was the high commandant of the Hakodate POW camps and succeeded Colonel Hatakayama as such high commandant (R 113, 114). He stated that Japan was not in a position for the receipt of PW's (R 138). Houses were not built and the best buildings were not satisfactory (R 138). Despite the fact that his superiors had approved the buildings and quarters facilities at all the camps in the Hakodate Camp area, he thought their opinion as to the adequacy of said buildings was mistaken (R 141). Consequently, he improved all parts of camp buildings by cutting windows to let in the sunshine (Ex. 162, p 4; R 140). He repaired many rooms of the prisoners in accordance with their wishes (Ex. 162; p 4). He improved many of the prisoners' rooms against cold (Ex. 162, p 4).

(2) Failing and neglecting to provide American and Allied PW's heat. There were four stoves in one long hut (Ex. 5); there were about three or four stoves running through the middle of the camp (Ex. 16); one stove was allowed in the billet between 60 men, and very often it was not "alight" (Ex. 95); there were only two stoves in the camp, these stoves were in a space of about 4' x 50' and it was impossible for more than 8 men to feel the heat from each stove (Ex. 148). There was insufficient fuel to keep the place properly heated. During the second winter at Hakodate Camp, the weather was so severe and the issue of coal so small that it was impossible to light the fire in the stove (Ex. 5). This led the prisoners to bring coal from the docks to the camp in their pockets for which they were punished (Ex. 5). At first, coal was not rationed, but it later became scarce and was rationed (Ex. 16). Heat in the camp was insufficient for those men who were suffering from malnutrition and lack of clothing (Ex. 16). One bucketful of coal per day was allowed for each of the two stoves in the camp (Ex. 148).

Colonel Emoto, a witness for the prosecution, stated that despite the regulations he issued fuel one month earlier than was required (R 128). It was his opinion that unless he used more coal than the coal ordered to be used, it was quite proper to use special coal. His principle was to go by the barometer, not by regulations (R 129). He knew there was a shortage of fuel in Japan during the war years but the quantity of fuel he used was what he could use. He thought he could regulate afterwards. He didn't use coal when he thought it unnecessary. On warm days, no coal was used (R 129). The regulations stated that only at a certain time will fuel be used and issued and not at other times. It was his opinion that these regulations applied to Japanese soldiers. As to the PW's, he thought it best to use his own principles (R 129). He thought that using coal to keep PW's in good condition was such a trifling matter that he amended the regulations by his spirit (R 129). As for the regulations pertaining to heat, he stated that it was necessary to be very careful to use the regulations with the best possible understanding. The War Ministry did not study minor matters. They could not write down such regulations for such particular people in Hakodate as to when stoves should be used. He thought it all right to cut trees, use excessive materials, and use that in place of coal, it was perfectly all right (R 130).

(3) Failing and neglecting to provide for American and Allied PW's adequate clothing. The Hakodate Main Camp was very cold in the winter time (Ex. 5, 23, 30, 119, 148). When some of the PW's arrived at Hakodate Camp, they were wearing shorts which they used in Singapore and Java (Ex. 5, 23, 30, 148). They were not provided with clothes and were made to work in shorts, no coats (Ex. 23).

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Clothes were later issued and consisted of discarded Japanese clothes, which were infested with lice and vermin (Ex. 16, 30). The clothes issue consisted of jacket, trousers and shirt (Ex 16). The weather was freezing and men, besides being sick, had no shoes and very little outer clothing (Ex. 119). When their boots wore out, they were not issued others, but instead were issued straw shoes which were useless because they fell apart when wet (Ex. 95). Men went down with pneumonia due to lack of clothing (Ex. 5).

Colonel Emoto, a witness for the prosecution, stated that a great number of PW's reported to him that they felt very cold in that part of Japan because they had lived several years in such places as Singapore and Java. They were in need of shoes, overalls, shirts, drawers, gloves, coats, trousers, puttees, overcoats, socks, caps, etc., all of which he issued to them (Ex. 162, p 3). The PW's told him that under Hatakayama they received practically no issue of clothing (Ex. 162, p 3). He further stated that upon his inspection of the PW's, he noticed whether or not shoes or clothing were delivered to them according to regulations and after talking to them, he realized that there were many things that should have been given to them before his arrival and which could have been done in accordance with regulations (R 171). Regarding his issuing to PW's shoes, overalls, shirts, drawers, coats, puttees, work caps, etc., he stated that these articles were in the storehouse of the POW Camp when he came to the camp. When he heard of the need of these things from the PW's and knew they were in the storehouse, he ordered the finance officer to issue them immediately. The same procedure was done in the branch camps (R 159). All the materials that he gave the PW's came from the storehouse which belonged to the POW Camp. They were keeping many materials, and when he heard about it through the complaints of the PW's, he rang the bell and telephoned the finance officer (R 158). When materials were not available in the branch camp, they were sent from the main camp (R 170). He did not remember whether or not he checked the number of shoes or clothes available in the store-rooms upon his arrival at the camp. He had nearly one thousand PW's in all his camps, and in his judgment he thought it was possible to give them the clothing they wanted (R 170). He didn't remember whether or not he made an inventory of the supplies in camp when he took over command (R 170). He had forgotten whether, or not he had filed an inventory report pertaining to clothing supplies in April 1944 as set forth by regulations (R 173). He had completely forgotten about the Table of Issue to PW's under POW Regulations (R 174). When questioned about the regulation pertaining to the type of issue that should be issued to PW's, he stated that concerning issues of everything, he had forgotten after a lapse of time, but he knew at the time he was acting in accordance with the regulations. When PW's asked him to give them rubber shoes or ordinary shoes, he saw the documents necessary for him to see, studied the regulations and asked questions of the finance officer and after finding out it was all right to issue them, he issued, but now he has forgotten the details (R 174). He stated that the PW's he supplied shoes to were using Japanese tabis, that is split-toed shoes, they called them. PW's were wearing many kinds of shoes; Japanese-style clogs made in Hokkaido and split-toed shoes, but in Hokkaido the snow was very deep, and anyone who did not have leather shoes or boots was in great trouble. He stated that the issuance of the split-toed shoes was permitted by regulations, but in Hakodate PW's were suffering from colds and might contract pneumonia (R 174). He stated that as to regulations, they should not be adhered to too much and the application depends upon the human factor. It is necessary to read between the lines. Regulations must be interpreted in the real spirit, which can be understood after reading them carefully. The reason so many high commandants have so many failures and mistakes is that they went in accordance with the written words. He stated that he read between the lines especially as to Japanese regulations because they were far from satisfactory and very imperfect. All high commandants should have taken every possible responsibility to exterminate death (R 175).

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(4) Failing and neglecting to provide American and Allied PW's with adequate food. Food in the Hakodate Main Camp was very poor and consisted of a small quantity of rice, served three times daily. The rice was occasionally mixed with potatoes (Ex. 1-A). They were fed on rice and soup three times daily. It was very inferior to Javanese rice and the quantity was insufficient. At first, PW's received about 400 grams of cooked rice daily, but as time passed they were only getting about 200 grams. During the season, they would get a few rotten potatoes, a little cabbage, some fish, and a small quantity of salt was given during the last two years of imprisonment (Ex. 7). There was very little food other than a little rice and fish and occasionally vegetables when they were in season (Ex. 15, p 1). Food was unpalatable at all times, and there was very little of it. Food consisted of yellowish-brown rice which had grit mixed in it and soup which was mostly water with a few vegetables (Ex. 16). PW's were getting moldy rice to eat (Ex. 23). PW's were given very little food, and if they managed to get a little extra, they were beaten by the guards. PW's took fish heads from the garbage cans and roasted them in the fire and ate them. Many times men attempted to trade articles of clothing for food. Food supplies were very poor, consisted of three meals per day of rice and boiled vegetables. A fish head was supplied once a week for lunch (Ex. 95). Dr. Aona refused to allow PW's to prepare their food in a sanitary manner. There was not enough water allowed to clean the food and he (Aona) would withhold the food until it spoiled before issuing it to the PW's. When a stray dog or cat appeared, he would order it caught and killed and serve it in the stew for the prisoners (Ex. 119). Food was very poor. PW's were given a cupful of soup and about one-half pint of rice three times a day (Ex. 148). At the time I was living in the hospital at the main camp, food was not too bad (Ex. 82). PW's were emaciated from starvation (Ex. 1-A). Men went down with pneumonia due to malnutrition (Ex. 5). PW's were half starved (Ex. 27). Men were dying from hunger (Ex. 148).

Colonel Emoto, a witness for the prosecution, stated that when he relieved Colonel Hatakayama as high commandant of the Hakodate Camp, he did not discuss the food situation at the various camps with him (R 114), nor did he make any inquiry of Colonel Hatakayama as to what the regulations were concerning food rations for the PW's (R 114). In his interviews with PW's, they told him that all during the period that they were under Hatakayama, they were constantly hungry. Pursuant to this information, he first increased the food allowance by 100 grams of staple food and later increased the food allowance another 100 grams, making it a total of a 200-gram increase (Ex. 162, p 2). He had forgotten the ration that was given to PW's under Colonel Hatakayama's command (R 150). He did not remember whether the ration issued by Colonel Hatakayama was or was not in the regulations. The only thing he was interested in was that the PW's said they were hungry and he tried to increase the quantity of food (R 150). In answer to the question, "Did your investigation reveal that the ration of food approved by Colonel Hatakayama was below the ration prescribed by the POW regulations or was it within the POW regulations?", he stated that he did not pay much attention to that matter because the PW's stated that they were hungry and could not work, so instead of paying any attention to rations, he decided to increase the food for health reasons (R 147). He was surprised at the question as it looked like there was an insinuation that he had to carry out orders relative to food and adhere to the regulations. His idea was different. His purpose was to meet the situation. Even though the quantity of food (that is the minimum quantity) was certain grams, it was not sufficient in his opinion. It was his opinion that the quantity must be changed according to the situation. Colonel Hatakayama might have been within the limit perhaps, but if the situation was to be met, his idea was not to feed the lowest quantity (R 147). He did not remember about any violation of regulations by Colonel Hatakayama (R 148). He was investigated by the Kempei Tai (R 149). He stated he gave PW's food beyond the minimum quantity. In answer to the question, "In other words, you gave PW's food beyond the regulations," he stated that he gave them food beyond the minimum quantity (R 150). Even though it was the policy of command that food would be issued at minimum quantity, he stated that he never paid any attention to minimum quantity, that the question with him was to increase the quantity. His idea was improving the health and to do that he could not pay any attention to the minimum quantity of food allowed (R 150).

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As well as he remembered, the maximum amount of staple food allowed by the regulations was 400 grams for the officers and 570 grams for PW's under WO, and in addition, the high command had the privilege of increasing as much as 220 grams. This maximum was later reduced by the War Ministry (R 158). Sometime in June or July 1944, he received an order to decrease the amount of food he was giving the PW's (R 136). He obeyed that order to the extent that he reduced the food gradually in order to not further weaken the PW's (R 136). The officer of the Finance Section of the Northern Army did not understand his method of complying with the order so he was criticized (R 136). He did not think he was giving more food to PW's than was being issued to Japanese garrison soldiers. Based on his plan, he issued food to the best of his possibilities. In view of the food shortage in Japan, many officers of the Northern Army said he was giving PW's too much food. He knew this situation, but the Army authorities should have changed the regulations. Sometimes he gave more food than was allowed by the regulations. Sometimes he gave less. He gave different quantities at different seasons of the year. He thought such a plan all right if the amount of food given balanced with the regulations at the end of the year (R 136). He could not see how the Army Finance Officer could criticize his plan without studying the matter. All the Finance Officer was thinking of was the regulations in the Japanese Army. He thought greater consideration should have been given to the PW's (R 136). Japanese Army regulations were not so good as they pertained to PW affairs. The regulations were written for Japanese soldiers who were in training to acquaint them with the hardships and privations. PW's were different. They were not training but were used as workers and should be given plenty of rest and food within the limits of possibilities.

Colonel Emoto was called back as a witness for the purpose of further cross-examination by the defense (R 365), and stated that at the time he took command in March 1944, he did not remember how many grams of staple rice or other kinds of food that were given to PW's before his arrival. PW's told him that they were hungry, so he increased the ration 100 grams. They later told him they were still hungry, so he increased the food ration another 100 grams (R 365). He does not remember the total number of grams that the PW's received after he made his second increase. He talked to the Finance Officer and was satisfied that what he was feeding was in the regulations (R 365). Any statement by other witnesses that he increased the ration only 100 grams is not correct. He issued 200 grams. He stated that 570 grams plus 220 grams, making a total of 790 grams, was the maximum amount of rations allowed by the regulations (R 367). He thought that after making the increase in the rations, it was more than the maximum quantity that was allowed by the regulations. He asked the Finance Officer about this and he said all right. PW's at Kamiiso were getting 100 grams more than other camps. So only 100 grams were increased in that camp, but in other camps 200 grams were increased. He did not pay any attention to the quantity (R 368). He talked with the Finance Officer continually about improving the rations (R 368). If Lieutenant Takahashi stated that he only increased the ration 100 grams, he is stating an untruth (R 369). His principle was to keep the PW's from dying and to satisfy them. Quantity of food was not an important matter. He was only interested in whether or not the PW's were satisfied (R 370). He thought by increasing or decreasing food over a period of two years to come within the regulations was quite right. He believed that if he could give a bigger quantity of food for a certain length of time this year he could economize on food next year (R 370). Such a scheme is not written in Japanese imperfect regulations. It was his idea, as far as regulations were concerned to read between the lines, especially when high commandants were ordered to command poor PW's in such a difficult situation when Japan was very short of food supplies and when high ranking officers didn't possess knowledge of handling PW's (R 370). His idea was to satisfy the PW's even if he had to violate the regulations under certain circumstances. He also felt that he should carry out his duties as best he could and stay within the regulations. That was the reason that he discussed these matters with his Finance Officer (R 371). He remembers that at the time he could not increase 220 grams and stay within the regulations, but could increase 200 grams. He believed that the total grams allowed after his increase was about 5 grams less than the maximum allowed by the regulations. However, he did not go by quantity (R 371). Lieutenant Takahashi's

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statements as to the amount he increased the rations was not the truth. There were hard workers and light workers, and it was very complicated to figure out how much ration each should be fed, and it was very easy to make a mistake. There was an average increase of 100 grams two times (R 372). He stated that it was possible that he took from those who didn't work and gave to those who did heavy work. Such was the question of arithmetic and the Finance Officer kept up with that (R 373). He did not decrease any person's food (R 373). When he took command he believed he issued clothing to a little more than 50 or 60 PW's as stated by Lieutenant Takahashi.

As to Specification 3: Colonel Hatakayama visited Camp Yakumo three times, and visited Murroran about every two months. During these visits no one was allowed to approach him. On one occasion he visited the camp with the Swedish Consul, but no one was allowed to talk with him or the Consul. There were some glaring cases of death of PW's due to ill-treatment and neglect (Ex. 1-A). All beatings ceased after the departure of Colonel Hatakayama due to the strict orders issued by his successor, Colonel Emoto (Ex. 3 p 2; 6 p 1; 8 p 4; 17 p 2; 25 p 3). Colonel Hatakayama never took any active part in the mistreatment of PW's, but on many occasions stood by and watched while PW's were being severely beaten. He has been seen and heard to order his officers and guards to beat PW's (Ex 4 p 3). The beating of Sergeant Hall by guard Saito was reported to Colonel Hatakayama by Major Andrews, but no action was taken. Colonel Hatakayama knew of the atrocities going on around the camp, but he never did let any of the reports get to him (Ex. 7 p 4; 11). Under Hatakayama the PW's suffered many deprivations and much cruel treatment (Ex. 8 p 4). Colonel Hatakayama could not be approached except through an interpreter; therefore, there was no way of telling how many complaints got through to him. One morning in March or April, 1943, Colonel Hatakayama was standing about ten yards distant from medical parade. Medical orderly Inai and a guard were slapping the PW's. Major Andrews reported this to the Colonel, who called the orderly and guard and talked with them. They ceased the slapping (Ex. 16 p 3). Protests were made to Colonel Hatakayama that requiring PW's to work in iron mines was a violation of International Treaties. Colonel Hatakayama replied that the Japanese had no concern with International Treaties, and he had given orders to Nagamura to punish anyone who made complaints of this kind (Ex 21).

As to Specification 3a: Not Guilty.

As to Specification 3b: Seichi Yutani was a guard at the Hakodate POW Camp from 4 January 1943 to 30 July 1944 (Ex. 163). The mistreatment and beating of Peter Burtonwood by Yutani, Sasaki and Suda during January or February 1944 (Ex 12 p 1; Case Docket No. 219, Saito et 3, Yutani, Spec. 1, R 76). Mistreatment of PW Edward F. Barry by Yutani and Sito in the year 1943 at Hakodate Main Camp (Ex 26; Case Docket No. 219, Saito et 3, Yutani, Spec. 2, R 76). Beating of PW Sayer Poll by Yutani at Hakodate Main Camp. Colonel Hatakayama was the Camp Commander. Yutani and Saito beat PW's with their fists, rifle butts and bayonets. The camp commander did nothing to improve the conditions of the camp. He was followed by Lieutenant Colonel Emoto, who stopped the beating of PW's. Yutani and Sasaki beat PW's on many occasions with their fists. The camp commandant was Colonel Yatakayama, who did not bother to interfere or check the ill-treatment of PW's. Yutani struck PW Poll in March 1943 at Hakodate main camp. In June 1943 at Hakodate main camp, Yutani struck several PW's while they were standing at attention (Ex 15 p 2, 17 p 1, 6; Case Docket No. 219, Saito et 3, Yutani, Spec. 4, R 76). Yutani beat PW's, but no outstanding incident could be cited (Ex. 27 p 3).

As to Specification 3c: Terukichi Saito was a guard at the Hakodate main camp from January 4, 1943 to February 17, 1945 (Ex. 163). He was nicknamed "Billy Bennett" (Ex. 3). Mistreatment and beating of PW Stanley Hough and J. Hilley on or about 31 August 1943 at Hakodate main camp by Saito (Ex. 18; Case Docket No. 219, Saito et 3; Saito, Spec. 1; R 73, 74). Mistreatment of PW J. Hall by Saito in or about May 1943 at Hakodate main camp (Ex. 5, 110; Case Docket No. 219, Saito et 3; Saito, Spec. 2; R 73, 74). Mistreatment by Saito of British PW Bray (Ex. 30; Case Docket No. 219, Saito et 3; Saito, Spec. 3; R 73, 74). Mistreatment of PW's Regan and Wilson (Ex. 95; Case Docket No. 219, Saito et 3;

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Saito, Spec. 4; R 73, 74). Beating and mistreatment by Saito of PW Paul Sechak (Case Docket No. 219; Saito et 3; Saito, Spec. 5, R 73, 74). Affidavits in support of the foregoing specification do not fix the date in which Colonel Hatakayama was in command. The date of the incidents was fixed as follows: shortly after the year 1944 (Ex. 8); during May 1944 (Ex. 10); I think the incident occurred in 1944 (Ex. 11); in March of April 1944 (Ex. 12); affiant knew no date (Ex. 27). Mistreatment and beating of PW L.A.C. Clayton by Saito in the summer of 1943 at Hakodate Main Camp (Ex. 131; Case Docket No. 219, Saito et 3; Saito, Spec. 7; R 74). In 1943, "Billy Bennett" beat Mike Daly. About November 1943, Saito, a civilian guard, beat PW Greenan. In April or May 1943, Saito, nicknamed "Billy Bennett", beat PW Poll (Case Docket No. 219, Saito et 3; Saito, Spec. 8; R 74). Saito was responsible for many beatings of PW's. His favorite weapon for beating was the rifle. All such beatings ceased after the departure of Colonel Hatakayama (Ex. 3 p 2; Ex. 6 p 1; Ex. 17 p 1 and 2). "Billy Bennett" attacked and beat PW's Garrod and Hough on several occasions. The camp commandant at this time was Colonel Hatakayama (Ex. 15 p 1 and 2).

As to Specification 3d: Shooichi Sasaki was a guard at the Hakodate Main Camp from June 11, 1943, to October 30, 1944. Mistreatment and beating by Yutani, Sasaki and Suda of Peter Burtonwood at Hakodate Main Camp in January or February 1944 (Ex. 12 p 1; Case Docket No. 219, Saito et 3; Sasaki, Spec. 1; R 74). Mistreatment of numerous American and Allied PW's by Sasaki at Hakodate Main Camp (Case Docket No. 219, Saito et 3; Sasaki, Spec. 3; R 75).

As to Specification 3e: Mistreatment of Flight Sergeant Burridge about 15 February 1943 at Hakodate Main Camp (Ex. 16; Case Docket No. 165; Miami, Spec. 1; R 77). Mistreatment of W. E. Roper about August 13, 1943 at Hakodate Main Camp (Ex. 148; Case Docket No. 165; Miami, Spec. 2; R 77). On many occasions Miami beat PW's about the face for no apparent reason. These beatings were all before Colonel Emoto came to the camp (Case Docket No. 165; Miami, Spec. 6; R 77).

As to Specification 3f: Kiyomi Imai was identified as a Medical orderly named "Emie" (Ex. 16; 106, 127, and "Imai" Ex. 119). This medical orderly was responsible for beating many PW's for the reason that they were sick and unable to work (Ex. 3, 4, 16, 106, 127). He was the worst orderly in his treatment of men (Ex. 16). He beat men who were visiting friends in the medical ward (Ex. 16). In May 1943, he beat PW Daly because he (Daly) told him he was sick (Ex. 127). Colonel Hatakayama was the camp commandant when these beatings took place (Ex. 4, 16). Mistreatment of Sergeant H. G. Gibbs between 29 March 1943 and 1 January 1944 at Hakodate Main Camp (Case Docket No. 23; Imai, Spec. 1).

As to Specification 3g: Kiyomatsu Suda was a guard at the Hakodate Prisoner of War Camp from 31 August 1943 to 10 August 1944 (Ex. 163). Mistreatment and beating of PW's Young, Hooper, Gilleland, Daly, Knight and Rose (Ex. 105; Case Docket No. 219, Saito et 3; Suda, Spec. 3; R 75). Mistreatment of Leonard C. Campbell at Hakodate Main Camp on or about February or March 1944 (Case Docket No. 219, Saito et 3; Suda, Spec. 4; R 75). Mistreatment of Peter Burtonwood (Ex. 12; Case Docket No. 219, Saito et 3; Suda, Spec. 5; R 75). Mistreatment of PW's Fisher and Tibbs (Case Docket No. 219, Saito et 3; Suda, Spec. 6; R 75). "Meenary Charlie" beat PW's without provocation. He beat Sergeant Daly for eating rice inside the barracks. Colonel Hatakayama was the camp commandant at this time. (Ex. 6). Beatings by "Meenary Charlie" were an every day occurrence (Ex. 7).

As to Specification 3h: Tsutomu Shiba was a lieutenant and later captain in the Medical Corps, serving in the Hakodate Main Camp from 22 August 1943 to January 20, 1945. Mistreatment and beating of British PW Seward in November or December 1943 at Hakodate Main Camp (Ex. 30; Case Docket No. 21; Shiba, Spec. 6; R 84). Mistreatment and abuse of PW's Jordan, Clutterback, New, Williamson and others in January or February 1944 at Hakodate Main Camp (Ex. 55, 94, 127, 144; Case Docket No. 21; Shiba; Spec. 7; R 84). Shiba beat PW's with his sword if he thought they were feigning illness (Case Docket No. 21; Shiba, Spec. 8; R 84). On or about 1 October 1943, Shiba hit Cpl. Passey on the head with a shovel and kicked PW Barry in the face (Ex. 26). About February 1944, Shiba took J. Hall from bed and beat and kicked him and made him stand at attention outside in the snow for about thirty minutes (Ex. 110).

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As to Specification 3i: Nobuhiro Miyakawa was identified as a guard nicknamed "The Yankee Clipper" (Ex. 148 p 5; Case Docket No. 174, Miyakawa; R 15). The accused was at Hakodate Camp from 15 October 1943 until 17 August 1944 (Ex. 163). Mistreatment and abuse by Miyakawa of PW Baker (Case Docket No. 174; Miyakawa, Spec. 1; R 80-81). Mistreatment and abuse by Miyakawa and Kudo of some six or seven PW's among whom were Peter Derbyshire and Campbell (Ex. 13; Case Docket No. 174; Miyakawa, Spec. 2; R 80-81). Mistreatment and abuse by Miyakawa of PW's Daly Rose and Hooper in January 1944 (Ex. 7, 107, 119; Case Docket No. 174; Miyakawa, Spec. 3; R 80-81). Mistreatment and abuse by the "Yankee Clipper" of PW's Cudd and Agro in January or February 1944 (Ex. 7, 94; Case Docket No. 174; Miyakawa, Spec. 3). Mistreatment and abuse by the "Yankee Clipper" of PW's Eric Becker, Otto Dickman, Harry Agro and Andrew Pisarczyk in early 1944 (Ex. 27, 143; Case Docket No. 174; Miyakawa, Spec. 3; R 80-81). Mistreatment and abuse by Miyakawa of PW's Bunkly and Henderson in the early part of 1944 (Case Docket No. 174; Miyakawa, Spec. 7). Mistreatment and abuse by Miyakawa of PW W. E. Roper and about 19 other Allied PW's (Ex. 148; Case Docket No. 174; Miyakawa, Spec. 8). Mistreatment and abuse of PW Kinner by the "Yankee Clipper" in October or November 1943 (Ex. 71; Case Docket No. 174; Miyakawa, Spec. 10; R 80-81). Mistreatment and abuse by the "Yankee Clipper" of Andrew Pisarczyk in January 1944 (Ex. 143; Case Docket No. 174; Miyakawa, Spec. 10; R 80-81). The "Yankee Clipper" beat and abused many PW's (Ex. 4, 21, 24, 27 and 71).

As to Specification 3j: Colonel Hatakayama struck Pvt. Todd with his open hand for his failure to come to attention (Ex. 24). In the winter of 1943 and 1944, Japanese guards took prisoners from their beds in the middle of the night to the guard room for punishment (Ex. 3). Colonel Hatakayama stood by and watched while guards beat and mistreated PW's (Ex. 4). Flight Sergeant Burrige was put in solitary for striking back at a guard. Prisoners were ill-treated by the guards in the punishment cells (Ex. 6). Everyone in the camp was beaten sometime by a guard. There were from two to six beatings a day (Ex. 7 p 2). Lieutenant Aona caused unnecessary brutal treatment (Ex. 10). Beatings by Kudo and the Japanese guards were an every day occurrence. For protesting against physical training, a guard, nicknamed the "Chocolate Soldier", brutally attacked Pvt. Hunter with his rifle and kicked him (Ex. 15). Doctor Aona slapped PW Gibbs for leaving a scalpel in a glass of disinfectant (Ex. 16 p 2). In March 1943, PW Carter was made to stand in the snow in slippers for smoking in the corridor (Ex. 16 p 3). While working at the docks, Japanese civilians mistreated PW's (Ex. 17). Around August 31, 1943 the work leader beat PW Hough and Hilley (Ex. 18). Guards beat prisoners continually (Ex. 21; 23 p 6 and 7; 25 p 2; 26 p 1; 27 p 2; 30 p 2; 46 p 1; 49; 56 p 1; 58; 79; 88 p 2; 105 p 2; 120 p 2; 131 p 1; 133 p 1; 142 p 2; 155).

As to Specification 4: The accused aggravated the suffering and illness of American and Allied Prisoners of War by: failure to provide proper medical care and attention. Medical care and treatment in all the camps, other than the main camp in which the affiants were imprisoned, was very bad (Ex. 4, 9, 37, 39, 40, 42, 47, 52, 53, 60, 73, 84, 114, 116, 124, 130, 136, 137, 146, 154, 158). At Number 1 Detached Camp (Yakumo) from 16 June 1943 to 25 October 1943, there was no separate building or room for hospital cases. No medical supplies except those brought from Singapore. No hospital appliances or utensils such as urine bottles or bed pans. Instead of a Japanese doctor attached to the camp there was only a medical orderly. Pneumonia cases, when required to use the lavatory, had to be carried by their comrades out in the open air to an outside latrine which was beside the cookhouse. Request was made of Lieutenant Kudo for medical supplies (sulpha pyridine) to treat PW Faunch who was suffering from cellulitis of the face. Kudo treated the request lightly and made a mock of the prisoner's face. Faunch died of septicemia the day the medicine arrived. Sick call was held outside in the cold after work hours. No dressings were supplied. Paper had to be used to cover men's sores. Men had to wash their utensils, as well as their face and hands, in the same tub of foul smelling water. Men were transferred to this camp upon the order of Colonel Hatakayama. He visited the camp three times and could not have failed to see the conditions. It was obvious that no preparation had been made at this camp before the receipt of PW's. Many complaints were made to Camp Commander Kudo, but to no avail (Ex. 1-A, 136).

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Conditions at Number 1 Branch Camp (Murroran): Under Colonel Hatakayama Allied medical officers were not allowed to handle medical supplies (Ex. 1-A). There was no resident doctor in the camp and medical affairs were taken over by a medical orderly who was unqualified (Ex. 1-A, 112, 134). Medical orderlies, guards and civilian doctors beat sick PW's (Ex. 1-A, 33, 47, 76, 101, 112, 114, 158). Sick PW's were forced to work, no consideration being given to their illness (Ex. 1-A, 4, 14, 22, 91, 96, 112, 114). PW's were suffering from diarrhea, dysentery, beri-beri, and malaria and received no treatment for these diseases (Ex. 1-A, 14, 114). The medical orderlies determined which PW's would go to work instead of consulting with the PW doctor (Ex. 1-A, 14, 47, 112, 114). Many men died of pneumonia because there was no medicine (Ex. 99). Teeth had to be extracted without antiseptics. Boils could only be treated by lancing, because of lack of other equipment (Ex. 158). PW Glover died for lack of hospitalization and for lack of instruments with which to operate on him (Ex. 1-A). Japanese medical orderlies took medical supplies out of the camp and sold or gave them to their friends (Ex. 134). After the first one and one-half months at Murroran there was a separate sick ward, good accommodations possible to have patients treated and operated on in a Japanese hospital (Ex. 29).

Conditions at No. 1 Dispatch Camp (Kamiiso): There was no resident doctor at this camp (Ex. 50, 103). Only doctor who came to see the sick was a Japanese civilian doctor known as the "death doctor" (Ex. 103, 157). This doctor disliked PW's and took great pleasure in causing them as much pain as possible (Ex. 103, 157). He opened septic sores with a blunt surgical knife and then squeezed them, causing intense pain (Ex. 103, 157). In this camp it was a case of men treating themselves (Ex. 109). There were no drugs, antiseptics or bandages (Ex. 157). If men were real sick, they were transferred to the main camp (Ex. 103, 157). Sick PW's were forced to work regardless of their conditions (Ex. 4). PW's too sick to work were allowed to stay in their quarters from one to two days (Ex. 157).

See Colonel Emoto's testimony regarding medical treatment and supplies under Specification 1 (2).

As to Specification 5: Conditions at No. 1 Detached Camp Yakumo (Yakumo) from 16 June 1943 to 25 October 1943 as pertains to:

(1) Quarters: This camp consisted of two stables in a compound (Ex. 1-A, 33, 52, 82, 89, 136). Each stable accommodated 200 men, including 10 officers (Ex. 1-A, 82, 89, 136). The roof of the buildings leaked, and when it rained, PW's were well-drenched and had to lie in wet blankets (Ex. 1-A, 33, 130). Floors of the huts were mud and animal manure (Ex. 130, 136). Sanitation was very bad (Ex. 1-A, 124, 136, 158). The water supply consisted of tapping a spring (Ex. 33). There was one dirty watering point (Ex. 136). Living conditions were bad (Ex. 1-A, 42, 89, 137). There were no mats or beds and PW's had to lie on floor boards (Ex. 1-A). There were many lice and scabies (Ex. 136). PW's were transferred to this camp by Colonel Hatakayama. It was obvious that this camp had not been prepared to receive these PW's (Ex. 1-A).

(2) Food: Food was not bad at Camp Yakumo (Ex. 82, 96). Food improved slightly in quality but was small rations compared with the work that PW's had to do (Ex. 130). Food was fair (Ex. 42, 52, 137, 154, 158). Food was poor (Ex. 69, 73, 124). Rations at Yakumo were much better than in the main camp (Ex. 1-A).

(3) Clothing: Some men had to work with no footwear at all (Ex. 130). Clothing was scarce (Ex. 73, 124). Clothing was fair (Ex. 116, 154). Clothing was poor (Ex. 137).

Conditions at No. 1 Branch Camp Murroran as to:

(1) Quarters: Murroran camp consisted of wooden barracks, each housing from 30 to 37 men (Ex. 44, 47). There was a platform down each side of the hut upon which the PW's slept (Ex. 22). Men slept on the floor (Ex. 22, 29,

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33, 47, 159). Each PW was given ten blankets and one sheet (Ex. 29); five blankets (Ex. 44); four blankets (Ex. 161). Sleeping accommodations were cramped (Ex. 44). Sleeping accommodations were definitely over-crowded. Each man had twenty-seven inches by six feet in which to sleep, there being sixteen men in a room (Ex. 161). Murroran was a much better camp than Yakumo as it could accommodate seven hundred men whereas there were only six hundred PW's at the camp (Ex. 1-A). In the huts at Murroran there was more space to lie down (Ex. 29). Quarters were not bad (Ex. 102). Quarters were fair (Ex. 137). Housing was bad (Ex. 5, 14, 82). Housing was poorly constructed (Ex. 47). Housing was new buildings (Ex. 161). Sanitation was bad (Ex. 69, 124, 154). The latrine was within ten feet of the quarters (Ex. 91).

(2) Food: Food was bad (Ex. 35, 37, 42, 51, 102, 137). Food was poor (Ex. 14, 33, 60, 69, 73, 116, 124, 130). Food was entirely inadequate (Ex. 14, 22, 29, 33, 52, 134, 158). Rice was served three times a day. The affiant could not say much as to whether or not the food was satisfactory. When PW's were engaged in labor, the mid-day meal was larger (Ex. 22). Food was absolutely insufficient; consisted of three meals a day of rice and a vegetable soup (Ex. 29, 33, 44, 82, 130, 159). Occasionally had a fish and vegetable hash (Ex. 82). Onion stew (Ex. 130). Soldiers who worked in the factories got a little more. Later on PW's got 300 grams of bread per day with nothing else. Soldiers did not get any more than PW's did then (Ex. 29). There was a lot of sickness due to vitamin deficiency. Men suffered from diarrhea, dysentery and beri-beri. After Colonel Emoto took over there was a big improvement in the food. The quantity remained about the same. It was better in quality and better cooked. PW's got vegetables in the stew which was hitherto unknown (Ex. 14).

(3) Clothing: PW's were badly clad as to footwear. When boots that were worn at the time of capture wore out the PW's were issued canvas boots which were useless. Canvas boots kept out neither rain nor cold and PW's developed frostbite. Colonel Emoto opened the camp stores and PW's were supplied with proper boots and woolen scarves. The affiant had reason to believe that the boots and supplies were there during the command of Colonel Hatakayama (Ex. 1-A). PW's received cast-off clothing from the Japanese in a summer and winter issue. PW's were issued one set of underclothes consisting of one pair of long pants, undershirts with or without sleeves, one pair of cotton wool socks. If salvage was necessary, it could be done, but only after a lot of trouble (Ex. 29). Clothing was scanty and poor. There was no means of replacing anything. Footwear was non-existent except for the cloth boots issued. PW's were clothed only in rags of underclothes (Ex. 76). Clothing which was issued was too bad to be worn and was lousy (Ex. 91). PW's were furnished no outer clothes the first winter and had to work in tropical clothes. A lot of PW's got pneumonia. Later on things became better (Ex. 156). Clothing was bad (Ex. 14, 35, 51). Clothing was scarce (Ex. 40, 73, 124). Clothing was poor (Ex. 134). Clothing was fair (Ex. 116, 137, 154).

(4) Heating: Heating was "poor" to "bad" (Ex. 14, 60, 91). Quantity of fuel allowed was not enough to burn the stoves for more than two hours each week (Ex. 91). PW's picked up scrap pieces of wood, brought them to camp concealed under their coats. This was necessary in order to have adequate fuel (Ex. 140). PW Van Wieringen, who was a PW at Murroran from sometime in November 1942 until June 1945, stated that during the first one and one-half months at Murroran the barracks had big iron pot stoves, enough anthracite, but all the warmth disappeared through the roofs. After the first one and one-half months the barracks had small iron pot stoves in both soldiers and officers quarters and there was enough warmth (Ex. 29).

Conditions at No. 1 Dispatch Camp Kamiiso (Kamiiso) as to:

(1) Quarters: This camp consisted of wooden huts (Ex. 9, 103). The roofs of the huts were thatched with bamboo and other materials (Ex. 103). The roofs of the huts were cracked and one could see the sky through the gaps (Ex. 103, 109). The rain and snow came straight through the hut (Ex. 103, 109).

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Many windows in the hut were broken (Ex. 109). The walls of the huts were running with water. Insects of all sorts abounded (Ex. 103). PWs had to sleep on straw mats on slightly raised platforms (Ex. 9, 103, 109). Each PW was given five blankets (Ex. 9); four thin sheets of material to serve as blankets, which were verminous (Ex. 103); four thin sheets (Ex. 109). The barracks were over-crowded. Men slept so close together that each man was in constant touch with his neighbor on either side (Ex. 103, 161). Sanitary facilities were terrible and very primitive. No running water was available (Ex. 9, 40, 103, 115). Four buckets for one hundred and fifty men to wash in (Ex. 115). The only sanitation was provided by dry latrines situated within about twenty feet of the sleeping huts. Flies made the latrines a breeding ground and could have caused a lot of dysentery (Ex. 103). General conditions were fair (Ex. 115). Sanitary conditions were better at Kamiiso than at the main camp.

(2) Food: Food consisted of rice, a few vegetables and a little fish (Ex. 9, 109, 115). Occasionally pumpkin (Ex. 115). Seaweed and rice and occasionally salted herring (Ex. 50). PW's never had any meat, but bone soup was supplied (Ex. 115). Food was insufficient in quantity and sadly lacking in quality and variety. For breakfast PW's had a teacup full of boiled rice and the same amount of vegetable water with soy sauce. Lunch consisted of one and one-half cups of rice with a piece of dried fish about the size of a match box. Dinner consisted of one and one-half cups of rice and a thick soup made from a local type horseradish (Ex. 103). For food PW's got about 45 grams of boiled rice per day and a watery soup. On one occasion three cabbages were put in the water to make soup for 150 men. Weak tea was served. Meat was supplied once a month as a soup, a kettle and half for 150 men (Ex. 161).

(3) Clothing: Clothing was very scarce and not at all suitable (Ex. 4, 9, 40). It was half way through the winter before PW's were supplied with anything; were then only given a set of sackcloth (Ex. 9, 50). Clothing consisted of Japanese army tunic and trousers. No provision was made for changing wet clothing (Ex. 109). PW's were issued thin white overalls for working, this being the only issue of clothing received from the Japanese until 1945 (Ex. 161). Men died from lack of suitable clothing (Ex. 4).

(4) Heating: Heating arrangements were very poor. Huts had stoves in them, but they were like round tins and fuel was very short (Ex. 9). There were 2.3 pounds of coal issued for 16 men to the hut. The stoves were lighted at 5:30 p.m. and the fires were put out at 7:30 p.m. (Ex. 109). The huts were fairly well-off for heating (Ex. 50).

Colonel Emoto, a witness for the prosecution, testified relative to quarters, heat, clothing and food at all the camps in the Hakodate area. See his testimony relative to quarters, Spec. 2 (1); heat, Spec. 2 (2); Clothing, Spec. 2 (3); food, Spec. 2 (4) of this review.

As to Specification 6: The accused was charged with the unlawful disregard and failure to discharge his duty as high commandant of the POW camp in the Hakodate Area in that he failed to restrain members of his command and persons under his supervision and control by permitting them to commit acts, atrocities and other offenses against American and Allied PW's as hereinafter set forth in the sub-specifications.

Complaints were made to the camp commandant, who was at the main camp. He must have been aware of what was going on. Conditions improved after Colonel Emoto arrived (Ex. 9 p 2). Colonel Emoto stopped the beatings (Ex. 14 p 2; 33 p 2; 44 p 4; 47 p 3; 50 p 2).

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Colonel Emoto, a witness for the prosecution, stated that in the first group of prisoners he interviewed after taking command, two NCO's from Britain told him about the beatings (R 117). Many PW's told him that a great number of them had been beaten by Japanese (R 117); but they did not say anything about the names of persons to whom they spoke about such matters (R 117). He advised PW's in his interview with them not to speak ill concerning the conduct committed by Japanese personnel; that his policy was to let bygones be bygones (R 119). Colonel Hatakayama used a petition book system to receive complaints. The interpreter translated the reports into Japanese and brought the petition book to Colonel Hatakayama. No PW's were allowed to talk to him or meet him on any circumstances (R 120). He did not know whether or not Colonel Hatakayama received information regarding beatings, because Colonel Hatakayama did not tell him of such (R 126). He stated that the question, "Do you think, in your opinion, Colonel Hatakayama knew about the beatings?" was very hard to answer, but he would state that in Japan people in general did not think beatings were bad, especially members of the Army. It was his opinion that many prisoners of war high commandants who had formerly been regimental officers in the army, failed entirely to understand that beatings were wrong. He couldn't say whether or not Colonel Hatakayama encouraged reports on such beatings or that he did not think beatings were wrong (R 153).

As to Specification 6a: Suekichi Sato and Momoichi Moriyama mistreated and abused PW Raymond Fallows between June 1943 and 3 December 1943 by beating him on various occasions and forcing him to work loading cement bags while very ill (Ex. 34, 109; Case Docket No. 67; Moriyama, Spec. 5; R 91).

As to Specification 6b: Kaichi Hirate was the branch camp commander under Colonel Hatakayama from 1 December 1942 to the end of the war (Ex. 163). Captain Hirate, on or about 23 December 1943 at No. 1 Branch Camp, Murroran, mistreated and abused PW Raymond Suttle by beating, starving and exposing him to a frigid temperature, thereby contributing to his death (Ex. 1-A, 22, 28, 36, 39, 42, 44, 52, 53, 54, 57, 59, 72, 74, 77, 80, 81, 84, 89, 91, 92, 96, 112, 124, 130, 135, 136, 137, 146, 151, 154; Case Docket No. 4; Hirate, Spec. 1; R 85).

As to Specification 6c: Kunichi Araki was a medical staff sergeant at No. 1 Branch Camp, Murroran, from 20 March 1943 to February 19, 1945 (Ex. 163). Kunichi Araki, on or about December 1943 at No. 1 Branch Camp, Murroran, mistreated and abused PW Ernest Glover by beating him, forcing him from his sick bed and compelling him to attend roll call when he was physically unable to do so, thereby contributing to his death on the 3rd day of January 1944 (Ex. 1-A, 22, 30, 36, 39, 42, 44, 69, 72, 73, 77, 84, 89, 116, 124, 130, 134, 135, 136, 158; Case Docket No. 45; Araki, Spec. 1; R 101). As pertains to this specification, against Araki on review the reviewing authority found Araki guilty of beating but not guilty of contributing to his death.

As to Specification 6d: In April or May 1943, Lieutenant K. Hirate ordered a guard to beat PW Pellenceanu, and after the beating, locked him in an unheated cell where he was kept for a week. He died shortly thereafter (Ex. 29 p 2, 75, 125). On or about November 1943, at Murroran Branch Camp, PW Utting accidentally burned his coat. As punishment, Hirate denied him the use of an overcoat for the remainder of the winter (Ex. 59). Hirate also beat PW's many times around the eyes with a rubber hose or strap (Ex. 29 p 3; Case Docket No. 4; Hirate, Spec. 5; R 86, 88). In April 1943, at Camp Murroran, all the camp sick were beaten by Hirate, Araki and Asari (Ex. 75; Case Docket No. 4; Hirate, Spec. 5; R 86, 88). Sometime in November or December, at Murroran Branch Camp, Hirate slapped PW Buckley several times while he was standing at attention in front of the guard room as punishment for having obtained a tin of molasses. Captain Hirate, several days later, slapped Buckley again when he was brought before him to learn of the disposition of his case for escaping from the guard room (Ex. 83 p 1 and 2; Case Docket No. 4; Hirate, Spec. 5; R 86, 88).

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As to Specification 6e: In April 1943, Araki mistreated PW Van Daalen Meyers by brutally beating him and forcing him to work when he was physically unable to do so (Ex. 147, 150, 156; Case Docket No. 45; Araki, Spec. 2; R 101). On separate occasions, during the period of 20 March 1943 to 1 March 1944, Araki mistreated and abused PW's Douglas J. Lewis, E. H. Pieters, A. E. Green, Hamar DeLabrethoniere, Peter Robinson and Duden, by beating, striking and kicking them (Ex. 47, 108, 39, 112, 154, 35; Case Docket No. 45; Araki, Spec. 3; R. 101). In February 1944, Araki beat an unidentified British soldier because he fainted on parade. He was sick and unfit for work (Ex. 37). Araki abused many PW's by forcing them to work while sick. At medical parade he would allow about one in ten sick PW's to stay in camp; the rest he would hit with a stick or smack them on the jaw (Ex. 47). In early 1943, at Murroran, Araki, together with other guards, beat PW's on sick parade who couldn't show outward signs of fractures or terrible wounds (Ex. 75). Araki paraded the sick and struck them all (Ex. 108). On April 5, 1943, Araki chased all of the sick PW's out of the barracks and beat them in the face with rubber tubes. This he did to check the seriousness of their illness. Some of the sick could return to the barracks; others had to carry coal all day. A day previous to this, Araki "beat ten men out" of the hospital because he thought there were too many patients. On April 25, 1943, Araki made all the PW's on sick parade stand outside because the mess tin of one of the Japanese laborers in the camp was said to be stolen (Ex. 156; Case Docket No. 45; Araki, Spec. 3, in support of the mistreatment of numerous PW's not set forth in the specifications).

As to Specification 6f: Biji Asari was Sergeant in the Japanese Army, attached to No. 1 Branch Camp, Murroran, from 1 December 1942 to 19 February 1945 (Ex. 163). Between 20 December 1942 and 3 March 1944, Asari mistreated and abused Father O'Mahone, Mr. Leech, Morris Wynd, W. G. Williams, P. C. J. Meys, Cornelis Van Der Wall, W. J. DeWilde, B. Juttery, Adam and Dietrich and numerous other Allied PW's by slapping and brutally beating them (Ex. 29, 76, 98, 101, 156, 160; Case Docket No. 43, Watanabe et 4; Asari, Spec. 1; R 99).

As to Specification 6g: Toshio Takeshita was a civilian guard at No. 1 Branch Camp at Murroran from 1 February 1943 to 13 January 1945. In December 1943 (Ex. 163), Takeshita, at Murroran Camp, beat PW Donnelly across the face and body with a studded belt (Case Docket No. 43, Watanabe et 4; Takeshita, Spec. 2; R 100). In January 1944, Takeshita, at Murroran Camp, struck PW Hobbs nine times across the face with a studded belt because two men in his group had stolen a few beans (Ex. 116, Case Docket No. 43, Watanabe et 4; Takeshita, Spec. 3; R 100). In August 1943, Takeshita, at Murroran Camp, beat PW Pritchard unmercifully with a stick for no apparent reason (Ex. 37). About August 1943, Ktiska, at Murroran Camp, hit a Dutch PW over the head with a butcher knife, laying the right side of his scalp open. The reason for the beating was the PW was apparently not working fast enough (Ex. 86). From February 1943 to 3 March 1944, Takeshita, at Murroran Camp, mistreated and abused many Allied PW's by beating them with sticks and a studded leather belt (Ex. 33, 37, 47, 76, 81, 86, 100, 101, 116; Case Docket No. 43, Watanabe et 4, Takeshita, Spec. 4; R 100).

As to Specification 6h: Shigeru Nishioka was a civilian attached to the army and was employed at Branch Camp No. 1, Murroran, from 6 January 1943 to 1 March 1944 (Ex. 163). On or about February 15, 1943, Nishioka did, at Camp Murroran, mistreat and abuse Staff Sergeant Leonard C. Campbell and thirty-two other PW's by beating and knocking them down with a bamboo pole and then kicking Sergeant Campbell in the face while he was down. At the same time he took a Dutch PW, who arose from the beating, and forced him to sit on his heels, holding a five-gallon can of water at arm's length in front of him. When he let the can down he was beaten. He lost consciousness twice. Nishioka threw water on him to revive him. This lasted about five hours (Ex. 86; Case Docket No. 43, Watanabe et 4; Nishioka, Spec. 1; R 100). Nishioka beat E. H. Pieters several times with a stick or his fist when he (Pieters) asked for more biscuit for the amount of money he had paid at the canteen (Ex. 51; Case Docket No. 43, Watanabe et 4; Nishioka, Spec. 2; R 100). The affidavit in support of this specification does not show the date of this atrocity, nor that it happened during the command of Colonel Hatakayama. In May 1943, Nishioka-san, at Murroran Camp, demanded PW Beech's gold watch, and upon Beech's refusal to give it to him, he was brutally

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beaten with a wooden bar and was told the beating would be repeated every night until he gave it up (Ex. 75, 138). Between 6 February 1943 and 1 June 1943, Nishoka beat the cook house detail of eight PW's at least twenty different times (Ex. 86). PW Tan Chew Oon was ordered to be interpreter on the aforementioned occasion concerning Beech's watch. He refused and was unmercifully beaten by Nishoka (Ex. 138). Between 6 January 1943 and 3 January 1944, Nishoka mistreated and abused numerous Allied PW's by beating them (Case Docket No. 43, Watanabe et 4; Nishoka; Spec. 3; R 100).

As to Specification 61: Sadao Watanabe was a civilian employee at Branch Camp No. 1, Murroran, from 20 September 1943 to 1 September 1945 (Ex. 163). On 27 October 1943, at Murroran Camp, Watanabe beat PW Alex J. Wymss and a group of PW's that he had with him because one man had his hat off. In November 1943, Watanabe also beat PW Eatwell for wearing a small woolen cap in the barracks (Ex. 39, Case Docket No. 43, Watanabe et 4; Watanabe, Spec. 1; R 98). On October 27, 1943, at Murroran Camp, Watanabe beat PW Thoroughwell for going to the latrine. He beat him with his fists and knocked him down five times (Case Docket No. 43, Watanabe et 4; Watanabe, Spec. 2; R 98). In November 1943, at Murroran Camp, W. J. Crone, while returning from the latrine, was accosted by Watanabe. He took Crone into the machine shop and beat him into unconsciousness, using his hands, feet and rifle butt (Ex. 91, 92; Case Docket No. 43, Watanabe et 4; Watanabe, Spec. 3; R 98). In November 1943, at Murroran Camp, Watanabe forced PW John Knudsen to stand at attention, hit him with his fists and knocked him to the floor. Watanabe repeated this several times until Knudsen was unable to arise. Then he kicked him in the stomach. The same abuses were repeated three or four days subsequent to this initial treatment. Knudsen received two broken ribs, internal injuries and black and blue marks on his face and body as a result of these beatings (Ex. 82, 86; Case Docket No. 43, Watanabe et 4; Watanabe, Spec. 4; R 98). In November 1943, at Murroran Camp, Watanabe beat PW R. Donnelly for being sick in bed (Case Docket No. 43, Watanabe et 4; Watanabe, Spec. 5; R 98). In December 1943, D. C. Jackson, a PW, was suffering from beri-beri and was unable to walk. Watanabe dragged him out of bed and beat him into unconsciousness (Case Docket No. 43, Watanabe et 4; Watanabe, Spec. 6; R 98). In December 1943, at Murroran Camp, Edward S. Reagan, C.M.S. Green, William Bradley and others were sitting in a group during rest period. A Japanese civilian sat in their midst, and for this reason, Watanabe took off his leather belt and struck all of them twice across the face and struck Green three times in this fashion. He then made the members of the group face each other and forced them to hit each other across the face. This lasted for about fifteen minutes (Case Docket No. 43, Watanabe et 4; Watanabe, Spec. 7; R 98). In December 1943, at Murroran Camp, Watanabe mistreated and abused PW Radcliffe by unmercifully beating him with his belt buckle and fists for about 10 minutes and also prodding Radcliffe with his bayonet (Ex. 22, 28, 44, 57, 60, 72, 84, 158; Case Docket No. 43, Watanabe et 4; Watanabe, Spec. 8; R 98). On or about 8 December 1943, at Murroran Camp, Watanabe mistreated and abused PW Sidney Hays by beating him across the face, head and back for about ten minutes with his ammunition belt because Hays was wearing wooden sandals which he made himself (Ex. 42, 112; Case Docket No. 43, Watanabe et 4; Watanabe, Spec. 9; R 98). On or about 13 February 1944, at Murroran Camp, Watanabe mistreated and abused PW Grant by beating him for about twenty minutes for no apparent reason (Ex. 39; Case Docket No. 43, Watanabe et 4; Watanabe, Spec. 10; R 98). In December 1943, at Murroran Camp, Watanabe mistreated and abused PW Hoeseason by beating him with a stick and with his fists for about five minutes because he found fault with Hoeseason's work. After the beating, Hoeseason was forced to stand out in a severe snow storm without overcoat, hat or earmuffs (Ex. 54, 122; Case Docket No. 43, Watanabe et 4; Watanabe, Spec. 11, R 98). On 17 January 1944, at Murroran Camp, Watanabe mistreated and abused PW David Marshall by beating him and knocking him down forty or fifty times. Another time Watanabe beat Marshall because he (Marshall) told him he was sick with a fever (Case Docket No. 43, Watanabe et 4; Watanabe, Spec. 12; R 99). On 1 January 1944, at Murroran Camp, Watanabe beat PW Bean with his belt and fists for no apparent reason (Case Docket No. 43, Watanabe et 4; Watanabe, Spec. 13; R 99). About 23 January 1944, at Murroran Camp, Watanabe brutally beat several sick PWs with his belt buckle when they discovered him stealing a shirt (Case Docket No. 43).

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Watanabe et 4; Watanabe, Spec. 14; R 99). In October 1943, at Murroran Camp, Watanabe mistreated and abused PW James Winchester and all others in his billet by beating them on their faces with his belt, and upon tiring, forcing them to beat each other (Ex. 59, Case Docket No. 43, Watanabe et 4; Watanabe, Spec. 15; R 99). Between 26 October 1943 and 16 December 1943, at Murroran Camp, the "Basher" struck PW Booth on the right side of his head with the butt of his rifle, resulting in permanent deafness in the right ear. Watanabe seemed to be either crazy or sadist. Affiant saw him beat at least twenty PW's with rifle butts, fists, bamboo clubs, stove poker or just any handy weapon. In December 1943, at Murroran Camp, Watanabe mistreated and abused PW Parry by beating him with a heavy stick until they blood flowed. Watanabe, at Murroran Camp, on many occasions beat as many as twenty-five PW's at a time for no apparent reason. He was well-known in the camp for his brutalities. The "Basher", on many occasions, beat Americans with a belt buckle until they were unconscious. Watanabe was fond of handing out beatings to PW's. In February 1944, at Murroran Camp, Watanabe mistreated and abused PW John G. Barlowe by beating him with a rifle butt. Watanabe, at Murroran Camp, mistreated and abused PW's Bryson and Atakocuniu by hitting them with his hands and beating them with a bamboo broom handle for no apparent reason. Beating PW's was a daily occurrence for the "Basher". Watanabe, at Murroran Camp, mistreated and abused Fred C. Buckley by striking him with his bayonet across the face until he fell down and then kicking him. Watanabe, at Murroran Camp, beat PW's, at roll call and while at work, with his fists, stick or rifle (In support of the above incidents, Ex. 24, 33, 47, 72, 82, 83, 114; Case Docket No. 43, Watanabe et 4; Watanabe, Spec. 18; R 99).

As to Specification 6j: Not Guilty

As to Specification 6k: Momochi Moriyama, in January 1944, at Murroran Camp, mistreated and abused PW Walker by striking him violent blows with his clenched fist about the nose and mouth. Walker was stunned by the blow and fell to the ground, bleeding from his nose and mouth. In February 1944, at Murroran Camp, Moriyama mistreated and abused PW Walker by striking him at the base of his neck with a heavy stick and kicked Walker when he fell to the ground. Moriyama repeatedly knocked Walker to the ground as fast as he would get up. Walker was beaten because he stole some potatoes (Ex. 26, 157, 161; Case Docket No. 67, Moriyama; Moriyama, Spec. 1; R 90). Between June 1943 and December 1943, at Murroran Camp, Moriyama almost daily beat and kicked PW Horrocks. The beatings were usually for trivial things, such as going to the latrine, or not working fast enough (Case Docket No. 67, Moriyama; Moriyama, Spec. 2; R 91). During the winter of 1943 and 1944, at Kamiiso, Moriyama mistreated and abused Alwyn H. Andrews by beating him with a shovel, knocking him to the ground and then kicking him. Moriyama beat up other men in the same way. Colonel Emoto stopped the beatings upon his arrival (Ex. 19). Moriyama, at Kamiiso, mistreated and abused PW's Goff and Greenan by beating them with his fists and a broom handle (Ex. 15). In January or February 1944, Moriyama mistreated and abused PW's Hurst and Dunn by striking them over their heads with a stick for having in their possession potatoes which they had stolen. Moriyama then ordered Dunn and Hurst to fall out, and then proceeded to strike Hurst about twenty times over the head with a stick, then tripped him and when Hurst fell to the ground, Moriyama kicked him in the stomach and back. He then took him into the cement factory office where he hit him across the face with his hands. Moriyama carried out the same treatment on Dunn (Ex. 115).

As to Specification 6l: Not Guilty

As to Specification 6m: Yoshiaki Kariya was a guard attached to the Hakodate POW Camps from 1 February 1943 to 5 May 1945. Between 1 February and 3 May 1944, Kariya, at Murroran Camp, mistreated and abused PW's Pellenceau, Bailey, Bolton, Dowsett, T. Kime, T. Owens, D. Smith, Fawcett, Adams, Tan Chew Oon, Crozier, Stacey, Welsh, A. Souter, L. B. Blasberry, J. Parry, T. Denny, J. C. Laird, J. W. DeWilde, J. Muller, Jorgema, W. Altman, T. Beech, A. G. Davies, G. Swain and J. Kinner by beating and otherwise abusing them (Ex. 93, 102, 129, 139, 140, 159; Case Docket No. 231, Yoshiaki Kariya; Kariya, Spec. 1-21, inclusive; R 94-95). At Kamiiso, work officer Kudo abused PW's by making them double time until they fell out exhausted. He used petty reasons for beating PW's (Ex. 4).

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At Kamiiso Camp, interpreter Takeda beat PW's until they fell and then kicked them. Guards beat PW's constantly for trivial offenses (Ex. 21). At Camp Yakumo, beatings by the guards were a regularity (Ex. 24). At Murroran, the beating of PW's by the guards was a daily occurrence (Ex. 33, 47, 48). At Kamiiso, Naomi beat PW's about the face with his fists for no apparent reason (Ex. 50). In November 1943, guard Endo mistreated and abused PW Angell by indiscriminately beating him on the head, arms and body with a hardwood stick because he (Angell) could not load his truck fast enough (Ex. 62, 63). Between October 25, 1943 and January 1944, at Murroran, Endo mistreated and abused PW Evans by hitting him on the head and causing a wound in the scalp (Ex. 63). In April 1943, at Murroran, five or six guards beat a number of Dutchmen with leather belts until they were in a state of collapse. They were suspected of having broken into the canteen (Ex. 93). At Murroran, a guard nicknamed "Popeye" beat PW High with a stick and his fists because he was too weak to lift iron ingots into the railway cars (Ex. 114). In January or February 1944, at Kamiiso, a guard commander named Naomi slapped PW's Dunn and Hurst for stealing potatoes (Ex. 115). The latter part of November 1943, a guard mistreated and abused PW Knudsen by hitting him in the face with his fists and knocking him down. When Knudsen was unable to rise, the guard kicked him in the stomach for about fifteen minutes. This same guard beat Knudsen three or four days later (Ex. 128).

b. For the Defense:

Shigeru Yamazaki, a witness for the defense, stated that he graduated from the Japanese Military Academy in 1928; that he attained the rank of colonel; that in 1942 and part of 1943 he was a colonel on duty as a High Member of the Prisoner of War Information Bureau and was a High Member of the Administrative Department of Prisoner of War Affairs (R 200). He stated that regulations governing PW's in Japan were established by the bureau under the War Ministry and were approved by the Minister; that the Northern Army Commander had jurisdiction over the POW Camps in the Hakodate region (R 200). The main camp commandant of the Hakodate Camp was under the command of the Northern Army commander, and as such commander, his duties were to administer matters concerning PW's under the rules established by the War Minister and Northern Army commander (R 200). The main camp commandant did not have authority to make special rules with respect to PW labor (R 200). The army commander determined the facilities to be used by PW's at particular camps. The medical department of the Northern District Army determined the allotment of medical supplies to POW camps. The Hakodate POW camps were inspected by the Northern Army commander prior to December 1942, but he did not know whether the facilities in the camp were approved (R 201). As well as he remembered, the inspection by the Northern Army Commander was prior to the time the PW's arrived at the Hakodate camp (R 201). He inspected the camps on the order of the Prisoner of War Administrative Department Chief and was accompanied on the inspection by a representative of the Northern District Army. His job in the Prisoner of War Information Bureau was a High Member in the Administrative Department (R 202). His main job was as Liaison man regarding communications and relief supplies (R 202). He had nothing to do with any supplies except relief supplies. He was a member of the Prisoner of War Administrative Department and was ordered by the chief of that branch to inspect the Hakodate camps. The Intendence Department of the Northern District Army, acting under order of the Army Commander, was in charge of the food supplies for the POW camps (R 203). He did not know Colonel Hatakayama very well. He believed that the Hakodate POW camp was first opened around December 1942 (R 204). The duties of the high commandant of the Hakodate camp was to administer the POW affairs under the orders of the War Ministry and the army commander (R 205). The regulations governing the treatment of PW's did not include beating them. Colonel Hatakayama assumed command of the Hakodate Area Camps about December 1942, but he did not know how long he remained because he left the Prisoner of War Information Bureau in March 1943. He stated that when he inspected the camps in 1942, he inspected Hakodate, Murroran and Kamiiso as prospective camps (R 205). A camp commandant could not increase the food beyond the amount prescribed in regulations, even though in his opinion the amount of food allowed was insufficient (R 206). In the Japanese Army it is

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possible to propose a correction of regulations to higher authority (R 206). He did not recall of having seen a proposal by Colonel Hatakayama to higher headquarters to change the regulations regarding supply. As was the custom in the Japanese army, orders are issued by higher-ups, and there are very few times that opinions of lower officers would be presented to higher authority (R 206-207). However, it was not prohibited (R 207). The Intendence Department of the War Ministry fixed the amount of staple food for one PW for one day. These regulations were established by persons within the War Ministry who had something to do with the food situation. At the time there was a general food shortage in Japan. The amount of food given to the PW's was determined as an amount equal to that given to the Japanese. However, the actual amount was more than the Japanese ration, so there was quite a bit of criticism within the Diet. The amount was determined by regulations as 500 grams per PW and later it was decided that it was not enough, so the ration was increased 200 grams per person according to the work they performed. This ration was more than the Japanese soldier ration and resulted in a lot of criticism among the Japanese. Accordingly the increase was cut down 50 or 100 grams, depending upon the type of work they did (R 207). He did not recall when the ration was increased from 500 to 700 grams (R 207). It was the usual custom of the Japanese army to get by with just what they had. If the high commandant wanted any repairs done to the PW facilities, he had to first present a request to higher authority, and it was determined by them whether any repairing should be done or improvements made (R 208). At the time the Prisoner of War Information Bureau was established, the Minister of War, Tojo, established a policy regarding the PW's. PW's were treated according to this policy and according to regulations concerning the treatment of PW's. The policy laid down in Tojo's address was that prisoners should be treated fairly; however, they should never be pampered. Prisoners are to be used as workers in accordance with their health (R 210). At the time he inspected the camps in 1942 there was no hospital for PW's; however, they could hospitalize PW's in Army General Hospitals. In emergency cases they were treated by the medical officer within the camp, and if hospitalization was necessary, PW's could be hospitalized in private hospitals (R 210). As to repairs and improvements in the camps, if the repairing is of such a minor nature that it is possible to repair it within the camp, then the camp commander could do the repairing. However, if the repairing involved expense and labor, the matter then had to be referred to the army commander (R 214).

Tadashi Okajima, a witness for the defense, testified that during the war he was a member of the Imperial Japanese Army (R 215). He attained the rank of Colonel (R 216). He was a senior member of the War Ministry Prisoner of War Administration Bureau from March 1943 to November 1945 (R 216). He was familiar with the Prisoner of War Regulations handed down by the Minister of War. He was familiar with the army's jurisdiction over the Hakodate POW camps (R 217). The Northern District Army Commander had jurisdiction over these camps (R 217). The main camp commander of the Hakodate District Camp was subordinate to the Northern District Army (R 218). In addition to the regulations promulgated by the Minister of War, the Northern District Army made regulations governing the administration of PW's at the Hakodate Camp (R 218). The duty of the main camp commander of the Hakodate Camps was to enforce the regulations established on the War Minister and the regulations established by the Northern Army Commander. The main camp commander of the Hakodate Area Camps had no authority to make special rules or regulations in connection with the places of labor or the labor hours of the PW's. Nor did he have authority to change the facilities of the POW camps under his command, if such a change would involve expense and labor (R 218). Authority and duties of medical officers are prescribed in the "Interior Duties Regulations" of the army (R 218). The main camp commander of the Hakodate Area Camps had no authority over the medical officers as pertains to medical matters, but did have authority over them as to their duties (R 218). The main camp commander did not have any control over the medical officer as regards specialized medical matters (R 219). The medical officers assigned to the Hakodate Camp came under the direct command of the main camp commander (R 219). Around August 1943, the International Red Cross inspected the Hakodate Area Camps (R 219). A person by the name of Pesta Rotti, who was the assistant representative of the International Red Cross, inspected the camps. He came to the Prisoner of War Information Bureau and reported that

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the camps were generally in a satisfactory condition (R 219). PW's in the Hakodate Area Camps were under the custody and control of the high commandant (R 219). It was the duty of the Hakodate Area Commander to protect PW's under his custody and control from mistreatment (R 219-220). It was the duty of the Hakodate Area camp commander to see that prisoners under his custody and control were fed, housed and clothed according to the regulations governing such matters (R 220). It was the main camp commander's duty to maintain cleanliness within the camp, but as for repairing and making improvements on the installation, the camp commander only had authority over small matters. If the repairs involved expense and labor, it was the responsibility of the Northern Army (R 220). It was the duty of the Hakodate Area camp commander to see that PW's under his custody and control were treated by the doctor for illnesses (R 223). The camp commander had the authority to set the time for sick call under regulations contained in the "Army Interior Duty Regulations" (R 223). If several doctors were assigned to the Hakodate Camp Area, the high commandant determined to which camps they should be assigned (R 225). He knew Colonel Hatakayama quite well (R 225). He first saw him in November 1943, at Hakodate and Murroran (R 225). He stated that when he visited the camps in November 1943, he saw the working conditions of the PW's at the Hakodate Dock, Marine and Land Transportation, Asano Cement Corporation and Wanashi Iron works (R 225-227). Many PW's were excused from working at these places because of illness (R 227). The second time that he met Colonel Hatakayama was in December 1943 at the Prisoner of War Information Bureau (R 228). He did not recall whether there was a Japanese medical officer at Murroran Branch Camp when he visited there in November 1943 (R 228). The area commander had the authority to keep sick PW's from being sent to work (R 229). He did not know what method Hatakayama used in carrying out his duty of protecting PW's from mistreatment, but as a rule the camp commanders would punish anyone for mistreating PW's and would also issue instructions to his subordinates concerning mistreatment of PW's (R 229-230). Colonel Hatakayama gave instructions to the company employers at the Kamiso Mining Factory not to punish PW's. After instructing his subordinates as to the mistreatment of PW's the high commandant could go around to see if his instructions and orders were being followed (R 230). If beatings took place at Murroran Camp after Colonel Hatakayama had given instructions against corporal punishment, he would not be held responsible unless these beatings were brought to his attention by his branch commandant (R 230-231). He recalled that in one of Hatakayama's monthly reports he stated that he had given instructions regarding punishment of PW's at the time he took command (R 231). He recalls Hatakayama's report when he was working in the Prisoner of War Information Bureau around 1943 and 1944 (R 231). The Hakodate POW camps consisted of the main camp, the branch camp and the detached camp, and it was the duty of the main camp commander to administer the camps (R 233).

Kiichiro Higuchi, a witness for the defense stated that he was the Commanding General of the Northern District Army from 1 August 1942 to 31 October 1945 (R 234). He held the rank of Lieutenant General (R 234). The Hakodate POW camps were under the jurisdiction of the Northern District Army (R 234-235). He knew Colonel Hatakayama well. Colonel Hatakayama was camp commandant of the Hakodate POW camps, but he did not remember the dates (R 235). Colonel Hatakayama was a man of very few words. He was faithful to higher authority and was a typical Japanese soldier. He was well-liked by his subordinates. In spite of not knowing any English, he acted as a father to the PW's and did his job very well. He carried out regulations very well (R 235). Colonel Hatakayama was transferred from the Hakodate camp on orders of the War Ministry because at his age he would have to retire as a Colonel (R 235). As to violations of regulations occurring in a branch camp, the main responsibility would rest on the branch camp commander, but since a branch camp commander is under the main camp commander, there would be some responsibility for such violations on the main camp commander. The degree of responsibility on the main camp commander would depend upon how earnestly he instructed the branch camp commander (R 235). If Colonel Hatakayama had given earnest instructions and orders to members of his branch camps he would have fulfilled his responsibility 80 to 90%. However, the commander always has responsibility (R 235-236). If Colonel Hatakayama had no knowledge of violations of regulations, there would be no direct responsibility on his part (R 236). Colonel

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Emoto succeeded Colonel Hatakayama as main camp commandant (R 236). Colonel Emoto had contrasting characteristics from Colonel Hatakayama. Emoto was a man of many words and very fluent in English. He was self-boasting and self-advertising. He had a tendency to ignore the orders of high authority and to ignore the regulations. His subordinates knew him well and did not love him and did not respect him. Colonel Emoto was relieved from his command pursuant to a request by the witness to the War Ministry (R 237). He alone is responsible for having Colonel Emoto relieved. The reason he recommended that Colonel Emoto be transferred was because his treatment of PW's was such that it brought criticism from outside of the camp. Emoto did not think of Japan as a whole and carried out his good treatment of PW's outside of the camp. This was at a time when Japan was on the verge of losing the war and this type of action on his part would interfere with the cooperation between the army and the people. Many reports on his actions came from various directions--from the Soldiers Affairs Department of the Northern District Army; from people in bureaus connected with PW's and also from the Kempei Tai. Weighing these reports, it was decided that Colonel Emoto could not remain as a POW camp commander. If he were left as commander, the army would be criticized and separation of the army and people would be inevitable (R 237). Colonel Hatakayama served under him as Regimental District Commander of the 8th Division in 1942 (R 238). He knew him four months as a Regimental District Commander and a year and a few months as the main camp commander (R 238). He did not say that Emoto violated orders but would say there was a tendency on his part to violate the regulations (R 239). He did not believe that sick POW's were sent to work. So far as the branch camps were concerned it is within the discretion of the branch camp commander whether or not sick PW's were sent to work, and as to the main camp it is within the discretion of the main camp commander (R 239). It was true that the branch commander of Muroran Branch Camp was under the command and control of the commander at Hakodate (R 241). There should have been reports rendered his headquarters by the Hakodate camp commander for December 1942 to March 1944, but he did not remember seeing the reports (R 241). The reports should have been made every month according to regulations; however, he was not in a position to read these reports (R 242). Deaths of PW's at the Hakodate Camp between December 1942 and March 1944 were reported to his headquarters, especially immediately after the arrival of the PW's (R 242). There was a death report in every monthly report (R 242). He could not recall whether reports were sent to his headquarters concerning the confinement of PW's as punishment (R 242). He did not know that PW's were confined in solitary confinement because they had stolen minor foodstuffs (R 243). He made inspection tours of these camps (R 243). He was aware that PW's had to be treated humanely and that their health and welfare had to be protected, but there was a limit to this because of the conditions existing in Japan at the time (R 244). His headquarters received reports about the gross illness in the POW camps and he feared that there might be something wrong in the camps, so in January 1943, he went to the area on an inspection tour (R 244). Upon his inspection of the camps he was surprised that the PW's were in such a bad state of health. He tried to discover the cause of this and ordered the medical department to do everything they could to improve their state of health. He also told Colonel Hatakayama to take proper action so that their health could be improved (R 244). He discovered that the main cause of prisoners' sickness and death was that the PW's came from the south in an unhealthy condition and were suffering from malnutrition. The cure for malnutrition was not very well-known at that time. Once a person suffers from malnutrition it is very difficult to regain his health and the Japanese were not aware of the treatment of such sickness (R 244). Before his visit he thought that Colonel Hatakayama reported the health of the PW's in his monthly report (R 245). During his inspection tour of the camp he noticed that the heating system in the camp was bad so he gave instructions to improve that. At the time of his inspection the PW's were eating rice as their staple food. The PW's, not accustomed to eating rice, swallowed it without chewing it so that the more they ate the more they ruined their health. He advised Hatakayama to obtain wheat instead of rice and to give the PW's bread. Hatakayama followed his instructions very well. At the time of his inspection Hatakayama was gradually improving the conditions of the camp. As a result of changing over from rice to bread the weight of the PW's gradually increased (R 245). During his inspection of the camps he talked to a Dutch Lieutenant in German who told him briefly of

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conditions in general in the camp (R 246). He did not talk with the PW Major who was a physician but he did have with him a medical officer of his staff (R 246). During his inspection he did not hear that the Japanese doctor, Shiba, was a regular drunk and did not do his duty, nor did he hear that sick PW's were sent to work or that they were very frequently mistreated (R 247). If such conditions existed it was the duty of the camp commandant to straighten them out and in event the camp commandant didn't do it, it was his duty to reprimand or remove the camp commandant (R 247-248). It is the camp commander's responsibility to check on his subordinates and make frequent inspections to see that his orders are carried out (R 248). He had no knowledge of the mistreatment of the PW's by the Japanese medical officer, Captain Aona. Transfers of junior officers under his command were not brought to his attention. Had the camp commandant been transferred he would probably have known about it (R 248). At the time of the receipt of PW's, his command was not able to give enough clothing to the Japanese soldiers, so consequently the clothing issued to the PW's was insufficient (R 248). Not only was the clothing insufficient, but it was too small for the PW's (R 248). His command was not able to furnish sufficient medical supplies; however he was not acquainted with the details of this (R 249). It was his opinion that the camp commandant did everything he could to increase the clothing (R 249). As to how often a main camp commander should inspect his branch camps, that was a matter that should be left up to the main camp commander, based on how well he knew his branch commanders and how much confidence he had in their loyalty (R 250). He visited the camps one time when Colonel Emoto was in command (R 253). He did not notice much change in the condition of the camp when he made his inspection than when Colonel Hatakayama was in command (R 253). He stated that a camp commander has authority to transfer his subordinates from one camp to another, both camps being under his jurisdiction, but he does not have authority to transfer a subordinate to a camp not under his jurisdiction (R 258).

Hisaji Furuta, a witness for the defense, testified that from November 1942 to November 1945 he was a member of the Medical Department of the Northern District Army (R 259). At the time that Hakodate Camps were established the Army Commander ordered one of the divisions to send a medical officer to the POW camp. Once that medical officer was assigned if a future transfer was desired a request had to be submitted to the War Ministry (R 260). As regards medical affairs the main camp commander had the authority to establish a time for sick call and to determine how often the medical officer would visit the branch camps. As to the treatment of PW's, he did not believe the camp commander would interfere because he was not technically trained in medicine (R 261). In December 1942, he received reports concerning the death of PW's occurring in the Hakodate POW camps (R 261). He investigated the reason for the large number of deaths (R 261). Upon his investigation he found that most of the PW's died after they arrived at Hakodate and Murroran camps. They died of acute enteritis. The cause of this disease was due to their weakened condition enroute from the south (R 262). As a result of his investigation he was of the opinion that most of the deaths were due to their weakened condition upon their arrival from the south and there was very little responsibility on Colonel Hatakayama for this condition (R 263). He was of the opinion that during the year 1943 the supply of medicine was insufficient compared with the number of patients to be treated (R 263). It was his opinion that the insufficiency of medicine during the year 1942 and 1943 was due to the fact that Japanese troops were sent to the Aleutian and Kurile Islands and much of the army's medical supply was sent with them. Consequently the interior of Hokkaido suffered for the lack of medicine. This shortage applied to the Japanese troops within Hokkaido also. The main reason for the shortage was the delay of the supplies coming from the War Ministry (R 263). During the year 1943, Colonel Hatakayama made several requests for additional medical supplies (R 263). He knew of the medical facilities constructed at the Hakodate Camp (R 264). At first there were no facilities for hospitalization. However, about the first part of 1943 improvements were begun and by the summer of 1943 there were facilities and medicines where the patients could be hospitalized (R 265). These improvements in hospital facilities were made as a result of efforts put forth by the main camp commander and the medical officer (R 265). The hospital facilities were installed because

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Colonel Hatakayama requested the approval of the Northern District Army for their installation (R 265). He knew Colonel Hatakayama and recalls that he first met him on the 23rd or 24th of December 1942 at headquarters in Sapporo and talked to him at that time (R 265). He talked to him about the Hakodate Camps because they were under the jurisdiction of the Northern District Army of which he was a member (R 266). The reports of death in the Hakodate Camps were reported immediately by death certificates (R 266). His headquarters was concerned about deaths more than any other thing (R 266). He checked these reports every month (R 266). He investigated the deaths in the camp with Dr. Aona. They investigated the acute enteritis, acute colitis and discussed whether or not the two were dysenteries (R 267). On the occasion of his inspection in the camp, he accompanied the Northern Army District Commander and at that time inspection was made as to the general health condition of the camp (R 267). At the time of his inspection, sick PW's were remaining in camp (R 267). At the time of his investigation he checked what sort of treatment Aona was giving to PW's stricken with colitis and amoebic dysentery (R 267). He was of the opinion that he was giving sufficient treatment to the PW's (R 267). However, there was not sufficient medicine to treat all the patients (R 267). At the time of his inspection he was mainly concerned with the health condition and method of treatment of PW's. As regards the quantity of medicine and the method of storage that was checked by the pharmacist officer (R 269). PW's suffering from dysentery and colitis were given a laxative. Too, some medicine was given to stop diarrhea and also injections of glucose and salt water were given. At the time medicine was so insufficient that the aforementioned treatment was all that could be done (R 269). To alleviate the shortage of medicine they got all they could from the Hakodate hospital. That was insufficient. Sapporo hospital was requested to supply medicine but they were unable to do so; so a request was sent to the War Ministry to supply medicine as soon as possible (R 269). A lot of effort was made to obtain medicines, but it was impossible to obtain as much as was hoped (R 271). It was his opinion that PW's were given treatment whenever they were ill (R 272). He saw Red Cross medicines in the camp while there on his inspection (R 273). They were used in the treatment of patients (R 274). He asked Dr. Aona if he was using all the Red Cross medical supplies and he stated that they were (R 274). He inspected the camps several times after his initial inspection but did not remember the date (R 276). On the occasion of his visits to the camp he briefly examined the general condition of the sick PW's who were resting in the sick room (R 277). As to different death rates in different months in 1943 he stated that during the year of 1942 and during the latter part of 1942 and 1943 the PW's died as a result of acute colitis and dysentery, and the reason the death rate increased in May 1943 was that the PW's who came from the south were in a weakened condition and were suffering from malnutrition. They could not regain their health and were dying. All sorts of treatments were given, but it was impossible to help them regain their health. Few of the deaths were listed as malnutrition (R 277). The reason for this was that malnutrition has a tendency to become chronic and while suffering from malnutrition the PW's contracted other types of sickness which became the true cause of their death. Therefore the other type of sickness was listed as the cause of death in the death certificate (R 277).

Masao Nei, a witness for the defense, stated that he was a First Lieutenant in the Pharmacist Corps in the Japanese Army during the period 1941 to 1945 (R 278). He was the Pharmaceutical Officer of Hakodate army hospital from 1941 through April 1943 (R 278). As hospital Pharmaceutical Officer, his duty was to prepare and dispense medicine to the various units according to their requests (R 278). During the year 1943, medical supplies were insufficient throughout the country. Supplies were not sufficient within the Northern District Army nor within the hospital itself (R 278). In the year 1943, about half of the requisitions for medicines were filled (R 279). He personally knew that Colonel Hatakayama requested additional medicine from the director of the hospital and was given some although not a large amount (R 279). It was possible for the medical officers and medical orderlies in the camp to obtain the medicine from local stores (R 279). The Northern District Army was also supplying medicine for the POW camps (R 279). He went on a visiting tour of the POW camps, but he did not know anything that was going on inside of them (R 280).

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Iwao Takehara, a witness for the defense, stated that he was assigned to the Northern District Army in December 1942 as a Sergeant Major in the Soldiers Affairs Department (R 281). In November 1942 the Northern District Army received an order from the War Ministry to accept 1000 PW's. The PW's were scheduled to arrive at Moji in the middle part of November. They arrived the latter part of November. He arrived at Moji on the 12th or 13th of November and waited until the PW's arrived. Upon the arrival of the PW's many were sick and were suffering from malnutrition. Out of the 1000 which the Northern Army was supposed to receive, 25 died enroute. Out of the remaining number, 174 were too sick to stand a long trip to Hakodate, so they were hospitalized in Kokura hospital. These were suffering from dysentery. Out of the remaining 801 PW's taken to Hakodate, many were suffering from malnutrition but were not sick to the extent that they could not stand the trip. They were taken to Hokkaido. 200 were sent to Kamiiso POW camp, 300 to Muroran and 300 to Hakodate. A greater number of sick PW's were sent to Hakodate because there was a Japanese doctor there (R 282). Colonel Hatakayama arrived at the camp about three weeks after the PW's did (R 282). Most of the 174 that were left at Kokura were suffering from a contagious disease. Many of those taken to Hakodate were suffering from malnutrition but they did not have a contagious disease (R 283). Out of the 801 PW's taken to Hakodate there were quite a few who could not work immediately upon their arrival (R 283). The medical officer examined the PW's upon their arrival at Hakodate and put some of them to bed (R 284).

Jiro Tendo, a witness for the defense, stated that he was a First Lieutenant in the Japanese Army and served at the Hakodate Main Camp as Adjutant from 24 December 1942 to 20 July 1944 (R 285). He was present at the time Colonel Hatakayama instructed his subordinates in the various camps with respect to their duties (R 285). Colonel Hatakayama instructed his subordinates that PW's should be treated fairly and strictly but no individual punishment should be administered POW's. If it was necessary to punish any of them, a report would be made to higher authority who would take the proper action (R 286). Colonel Hatakayama usually inspected various branch camps and the detached camp once a month (R 286). On his tours of inspection he instructed his subordinates about the punishment of PW's (R 286). It was his opinion that Colonel Hatakayama only had knowledge of two or three beatings (R 286). The two or three instances that Colonel Hatakayama knew about he gave a warning to the perpetrator (R 286). He did not know anything about Colonel Hatakayama's answer to a complaint by the PW's that work in the iron mine was of a hazardous nature and an essential war industry (R 286). He did remember many requests of PW's that Colonel Hatakayama granted, such as the use of musical instruments, use of the phonograph, use of the playground; permission for the PW's to buy food on the outside; preparation of special food for officers (R 288). He knew of one occasion where Major Andrews reported to him that Japanese personnel were mistreating the PW's. He relayed the message to the camp commandant who gathered all the personnel under him and gave them a warning. He issued the same warning to the branch camps and the detached camp through a written message (R 288). He believes that the reason that the perpetrators were not punished was that Major Andrews did not go into detail as to the beatings nor did he give the names of the PW's involved. He believed that the reason that Major Andrews didn't go into detail was that usually PW's were beaten because they had violated a regulation and he did not want to make a statement about that because in event he had both the Japanese personnel and the PW's would have been punished (R 288). It did not make any difference to Colonel Hatakayama whether the requests were verbal or in writing. If it was possible he accepted or approved the request (R 289). He did not recall any request from the PW's to increase the food, except the request for the PW's to purchase food outside (R 289). He did remember once or twice requests were made to provide more clothing (R 289). Usually the request for food, clothing, etc, went to the person who was in charge of the respective department and from him to the camp commander (R 289). The PW's were ordered to send their requests through an interpreter (R 289). He did not receive any report that the interpreter did not properly bring forward the requests (R 289). Complaints were made through a complaint book, and if the camp commander did not receive the complaint, it would be revealed when the books were inspected at the end of the month (R 289). The complaint book was held in the room of the interpreter and a senior PW officer always had access to that room (R 289). The complaints were always written in the book by the senior PW officer in English, and

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the translation was written below the request. The answer to that complaint was also written (R 290). There were times when Colonel Hatakayama wrote the answers himself, but usually the officer in charge would do the answering, that is in the main camp. In the branch camp, if the request was such that it required an urgent response, it was sent to the main camp. However, if it involved questions that the branch camp commander could solve he usually did the answering. Complaints in the branch camps and the detached camp were gathered at the end of the month and were sent to the main camp (R 290). Colonel Hatakayama read the complaint book regularly (R 290); and read the complaints submitted from the branch camps and the detached camp at the end of the month (R 290). He was adjutant for about five months under Colonel Emoto (R 290). The condition of the camp at the very beginning was very bad because of many disadvantages. Colonel Hatakayama was continually improving the camp. Colonel Emoto merely took it over and continued that improvement. There was no special improvement after Emoto took command (R 290). He did not remember any occasion when rations could be increased from 500 to 720 grams (R 291). He was acquainted with the rules and regulations pertaining to rationing (R 291). According to the regulations 570 grams was the basic ration for PW's. This ration could be increased 220 grams depending upon the health of the PW's and the type of work that they were engaged in. This was determined by comparing it with the type of work the Japanese were doing. For officers or civilians who were getting the officer treatment the basic ration was 420 grams. Any increase in the 570 gram basic ration was dependent upon the type of work that the PW's were engaged in. Also the amount of food the Japanese in that area, doing the same type of work, were receiving (R 291). He did not know the whole food problem, but knew that they were getting more than 570 grams, because those who were going to work were getting food from the company as a result of Colonel Hatakayama's efforts (R 291). It was due to Colonel Hatakayama's efforts that an additional meal was given to the PW's by the companies they worked for (R 291). He heard about the increase of staple food rations by Colonel Hatakayama (R 291). He believed it was around April or May 1944 (R 291). He did not withhold any complaints from Colonel Hatakayama or act on any of them independently without Colonel Hatakayama's knowledge (R 291).

Seki Okubo, a witness for the defense, stated that from 1940 to April 1943 he was with the Wanishi Ironworks at Muroran as chief of the labor department (R 292). He knew Colonel Hatakayama, and sometime during the early part of 1943 he had a conversation with him concerning the treatment of PW's while employed by his company (R 292). At the time Colonel Hatakayama stated that the PW's working for his company must be treated fairly (R 292). He requested the company to assist him regarding food for the PW's; also in building barracks (R 292). He also requested more clothing for the PW's, and based upon this request, the company gave him clothing (R 292). He stated that he was not familiar with the terms of the contract between his company and the War Ministry for the employment of PW labor (R 293). He did not know the exact terms of the contract, but it was his opinion that the company was not obligated to furnish anything (R 293). The requests from Colonel Hatakayama was to supply POW camps with supplementary food (R 294). However, he did not remember the amount (R 294). There were several requests of this sort and sometimes the company granted the requests and other times refused (R 294-295). His company did comply with the request to furnish clothes for the PW's. Colonel Hatakayama made requests on the company to furnish material to improve the barracks. As well as he remembered his conversation relative to these requests took place in early 1943 (R 295).

Tamaji Suzuki, a witness for the defense, stated that from January 1941 to January 1946, he was chief of the labor department of the Japanese Ironworks at Kamiiso (R 299). He was acquainted with his company's request for PW labor (R 299). His company requested 500 PW's and was sent 200 at first and in May 1945 received 200 more, making a total of 400. As well as he remembered, the first shipment of PW's was received 17 November 1943 (R 299). His company was requested to provide the PW's with living quarters and quilts; others were to be provided by the army (R 299). Medicine was supposed to have been supplied by the army; however, it was requested that his company supply additional medicine. They complied with this request (R 299). Some of the requests for medicine were made

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by the main camp commandant and others by the branch camp commandant (R 299). The main camp commandant who made the requests for medicine was former Colonel Hatakayama and the branch camp commandant who made the requests was Second Lieutenant Naganuma (R 300). Around the 21st of December 1943, when Colonel Hatakayama made his first inspection of the camp, after the PW's were sent there, he requested materials to patch the barracks and for ceiling the barracks in order to keep the rooms warm, because some of the PW's had contracted acute pneumonia and were in a bad state of health (R 300). The company did all they could to comply with the requests by Colonel Hatakayama. However, at the time there was a shortage of material and the company did as much as they could (R 300). Around 21 December 1943, Colonel Hatakayama gathered all the civilian guards and work instructors of the company and gave instructions regarding treatment of PW's (R 300). He knew that Colonel Emoto succeeded Colonel Hatakayama (R 302). His company built the barracks which housed the PW's (R 303). And the responsibility of repairing them was upon the company (R 304). One barracks was turned over to the army, therefore whenever there was a request for its repair it was repaired by the company. He did not know whose responsibility it was to furnish heat, but shoes were supposed to be furnished by the army. However the company was assisting (R 304). The reason for the company assisting in matters of supply was in order to keep the PW's in good health and to reduce the number of sick PW's as much as possible (R 304). He did not know whether or not Colonel Hatakayama could have ordered the beating of PW's stopped or else PW's would not be allowed to work for the factories (R 304). He thought that PW's came to his company directly from the south (R 305).

Kan Ichi, a witness for the defense, stated that from February 1941 to May 1943 he was head of the labor department of the Hakodate Dock Company, Limited (R 307). Under the terms of the contract for working PW's between the War Ministry and the company, the company was to give the buildings in which the PW's lived and pay the PW's wages (R 307). His company employed as laborers Japanese, Koreans and convicts (R 307). Colonel Hatakayama made special requests of his company on behalf of the PW's. It was requested by him that PW's be used in a skilled type of work as much as possible. He prohibited individual punishment of PW's. It was requested by Colonel Hatakayama that the treatment room in the company be enlarged so that sick and injured PW's could be treated (R 308). He also requested that due to language barriers between the Japanese and PW's that the company hire an interpreter. Although other workers in the company did not have a rest day, Colonel Hatakayama requested that the PW's be given one day a week for rest (R 308). The treatment room referred to was not only used by PW's but by all company employees. This room was used in emergencies (R 308). Before the emergency room was enlarged, they had one senior doctor, two medical orderlies and one nurse. After it was enlarged, there were two senior doctors, three medical orderlies and two nurses. Medicines were also increased accordingly (R 308). The emergency room was not meant for hospitalization of patients but for their treatment during an emergency (R 308). The room was used exclusively for medical purposes (R 308). In his opinion the real reason for enlarging the treatment room was that PW's might become suddenly ill or involved in accidents and the company wanted to be in a position to treat them immediately (R 309). He saw Colonel Hatakayama visiting the worksite at least 12 or 13 times (R 310). He recalled an incident in February 1943 where a PW was injured on the head while scraping boat keels (R 310). He did not remember the incident himself as it was only reported to him. He did remember, however, that a temporary treatment was given to the PW at that time (R 310). He did not know whether or not the injured PW waited two hours in the PW mess room at his dock until he was taken back on a sledge to the main camp (R 311). He did not know that the PW died (R 311). He did not receive any written report concerning the incident. He heard about it from a member of the labor section (R 311). The first time Colonel Hatakayama visited the camp, a member of the company accompanied him, but after that he went around by himself as he knew the way around (R 311). Reports of accidents on the work-site were supposed to have been reported to him (R 311).

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Yoshio Nakajima, a witness for the defense, stated that he was a Sergeant in the Japanese Army, assigned to the Hakodate Main Camp in the latter part of December 1942 (R 311). He reported to Colonel Hatakayama (R 311). Colonel Hatakayama instructed him regarding the treatment of PW's (R 312). He was at Hakodate from December 1942 to February 1945. Colonel Hatakayama gave similar instructions to the guards and to the employers of the company for which the PW's worked (R 312). Colonel Emoto also gave orders as to the treatment of PW's (R 313). There were no differences between the orders of Colonel Hatakayama on this subject and those of Colonel Emoto (R 315). Colonel Emoto's orders were a little bit more explicit than Colonel Hatakayama's, as to what punishment he would mete out if his orders were violated (R 315). He did not feel that there was less mistreatment of PW's under Emoto than under Hatakayama (R 315). His job was working inside, consequently he was not in a position to witness any mistreatments (R 315). He did not know whether Colonel Hatakayama had ever reprimanded any of the camp personnel for mistreating the PW's (R 315). He heard that civilian employee named Miumi was scolded for mistreating the PW's (R 315).

Zenzo Kono, a witness for the defense, stated that he was a member of the Japanese armed forces during the latter part of the war and served at Hakodate Main POW Camp from 1 February 1944 until the end of the war (R 318). When he reported, he reported to Camp Commandant Hatakayama (R 318). He instructed him as to the treatment of PW's (R 318). He was a commandant of the detached camp from 1 February 1944 until about the middle or latter part of April the same year (R 319). This was the No. 1 Detached Camp (R 319). When he assumed command of the dispatch camp he gathered the PW's together and related the instructions given to him by Hatakayama. He also related the instructions to his subordinates. These instructions were in regard to the treatment of PW's (R 319). During the month of February 1944 Colonel Hatakayama made two inspections of the detached camp (R 319). First inspection Colonel Hatakayama made he asked about the health condition of the PW's. He observed the food that was given to the PW's. He inspected the worksite of the PW's (R 320). He cautioned those in authority not to let the PW's work in certain places because of the dangerous nature of the work (R 320). There were 150 PW's at the detached camp (R 320). When he first assumed command the accommodations were a little crowded. However, Colonel Hatakayama had already requested that the facilities be increased and the request was completed while his successor Captain Tendo was in command (R 320). He did not remember the exact date that the facilities were enlarged because he had returned to the main camp. He did remember that it was during the time that Captain Tendo was in command. Colonel Hatakayama requested the company to install a filtering system so that PW's could have adequate drinking water. This was done after the affiant assumed command. Colonel Hatakayama also requested that a latrine be placed closer to the worksite for use by the PW's (R 320). At the detached camp the facilities and food were to be furnished by the company. As conditions on the front got worse the food given to the PW's got worse compared to the food that was being consumed by the Japanese army. Hatakayama thought the food situation would be a detriment to the health of the PW's if left in the hands of the company so he requested that feeding of PW's be turned back to the army. This was realized in April 1944 (R 320). He served as dispatch camp commander under Colonel Hatakayama for approximately one month (R 322). And was succeeded by Lt. Naganuma (R 322). It was his opinion that Captain Tendo took charge of the camp in May or June 1944 (R 322). Tendo remained in charge of the camp until the early part of June 1945 (R 323). Negotiations for enlargement of facilities was started before he commanded the camp and the enlargement of facilities was completed during the command of Captain Tendo. He did not know the exact date of the completion of the enlargement of the facilities (R 323). The buildings were erected during the command of Colonel Emoto, but negotiation for their erection was done by Colonel Hatakayama (R 324). He was present at the time Hatakayama talked to the chief of the factory regarding these improvements. He wanted to know what the company was going to do about his request and was told by the chief of the factory that they had taken the matter up with the home office in an effort to get an expense allowance to improve the facilities (R 324). He knew that the construction of these buildings commenced during Tendo's time because Captain Tendo told him (R 329).

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Colonel Emoto also made attempts to get the buildings constructed. Colonel Emoto used the same procedure in getting the construction as Hatakayama (R 330). The first negotiation with the company was made by Hatakayama before the affiant assumed command (R 330). When the affiant assumed command, Colonel Hatakayama told him that negotiations with the company had been started and for him to continue the negotiations as detached camp commander (R 330). Adequate drinking water was furnished the camp in February 1944 (R 330). The buildings could have housed all the PW's before the enlargement, but there was a certain amount of inconveniences, so in order to give more room to the PW's, Colonel Hatakayama requested that the facilities be enlarged (R 333). He was always free to consult with Colonel Hatakayama about camp problems (R 333). Senior PW officers had to submit their complaints to the main camp commandant through the commander of the branch or detached camps (R 333). He has transmitted requests from PW's to the main camp commandant (R 333). He transmitted requests to increase the amount of coal, to increase the amount of medicine and clothing (R 333). He always forwarded requests submitted by the PW's (R 333). Colonel Hatakayama instructed him to cooperate with senior PW officers with regard to PW problems (R 334).

Tsuneo Takahashi, a witness for the defense, stated that he was the Intendence Officer at the Hakodate Main Camp from December 1, 1942 until January 1945 (R 335). He was first assigned to this camp the latter part of November 1942 (R 335). He was a Sergeant Major at first and was later given a commission on 10 December 1942 (R 335). He knew the accused, who he thought arrived to take command of the camp the early part of December 1942 (R 335). Prior to the arrival of Colonel Hatakayama PW's were receiving 570 grams of staple food per person per day (R 335). After Colonel Hatakayama's arrival he ordered a 100-gram increase per person per day in order to preserve their health and because they were doing labor (R 336). After Colonel Hatakayama's arrival the PW's were each issued 670 grams per day; however, there were times when they were given more than that (R 336). In April or May 1943 the food was increased by an additional 150 grams, bringing the total to 720 grams per person per day (R 336). This was for all the PW's at Hakodate camps (R 336). Colonel Hatakayama also requested supplementary food from the companies where the PW's worked (R 337). Some companies complied with the requests and others didn't (R 337). Kariku Works Company did comply with the requests for supplementary food (R 337). Prior to the opening of the camp he, as Intendence Supply Officer, received instructions from the Northern District Army concerning food to the effect that there was a set amount to be given to the PW's. Also as regards the expense for the food, he was warned that rice must be conserved because Japan in general was facing a shortage of food (R 337). He knew about clothing that was being supplied to the PW's (R 337). Clothes were given to the PW's according to regulations. Clothing that was in need of repairs was repaired. One or two more blankets beyond that authorized by the regulations were given to each PW because the climate in Hokkaido was very cold. PW's were issued shoes, depending upon the necessity and the extent of damage of the ones they had. There was no instance where PW's had no shoes at all (R 337). According to regulations, Japanese army shoes, tabi shoes or canvass shoes could be issued to the PW's. Each PW was supposed to be issued one of these. The issuance depended on the stock at hand. Some were given Japanese army shoes, some tabi shoes and some canvass shoes (R 337). Shoes and clothing of the PW's were inspected when they went to work in the morning, during the interior inspection (R 338). This type of inspection was to determine whether or not the amount of clothing issued was in possession by the individual, or whether or not repair was necessary (R 338). This type of inspection occurred about once a month (R 338). In December and January 1942 and 1943, he believed that the Japanese soldiers were entitled to 786 grams of refined rice and barley per soldier per day (R 338). He thought that the increase of food under Colonel Hatakayama came when the PW's started to work outside the camp (R 338). He thought that the amount of food the PW's were receiving was sufficient to properly feed those who were performing ordinary type of labor (R 338-339). The amount set for the PW ration was 570 grams, and when Colonel Emoto took command he ordered a total increase of 200 grams over the set amount of 570 grams (R 340). In other words, he ordered the ration increased to 770 grams (R 340). As he recalled it, Colonel Emoto ordered the ration increased

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up to the maximum set by the regulations. Emoto said the amount would be 570, which is the set amount, plus 220 grams which would bring the ration up to the maximum (R 340). To the question, "Colonel Emoto testified that when he took command at the Hakodate camp, the PW's were receiving 500 grams per day and that he ordered that the ration be increased by 200 grams" he stated that he remembered Colonel Emoto saying to increase the amount of ration to the maximum allowed by the regulations (R 341). He said he thought that 600 grams per day per PW was sufficient for those who were performing the ordinary type of work, but for those who were performing especially heavy work that amount might not have been enough (R 341). Of the PW's at Hakodate Main Camp, all were performing ordinary type of work except those who were working at the Kairiki Works Company (R 342). Staple food such as rice, barley and wheat flour came from the Intendence Department of the Northern District Army. Supplementary food, which was not rationed, was bought in the city of Hakodate (R 342). at Kamiiso Camp, he did not know where the food came from because the company was providing it. However, when the army started to provide the food, it came from the Intendence Department of the Northern District Army (R 342). He did not know the exact date that the army resumed furnishing food at Kamiiso Camp; it could have been around October 1943 (R 343). He issued clothing to the PW's as it was needed (R 343). To the statement that Colonel Emoto ordered him to issue clothing to the PW's who were in need of clothing, he stated that Emoto, by talking to individual PW's received information from these PW's that they were in need of shoes, clothes and work clothes. So he ordered that these items be issued to these individuals who were in need of them. He stated that they had leather shoes in the warehouse at the time (R 343). At that time some of the PW's were wearing tabi shoes (R 343). He stated that snow was on the ground practically all winter long at Hokkaido and tabi shoes could easily be damaged during the winter time. However, PW's did not wear tabi shoes throughout the year. He did not know whether or not some were wearing them during the winter time (R 344). When Colonel Emoto took command, he ordered him to issue leather shoes to those PW's who were wearing tabi shoes (R 345). The reason leather shoes were not issued to all PW's who were wearing tabi shoes was that the issuance of the leather shoes depended on the distribution of footwear made by the army, and in some cases tabi shoes were better for work because they were lighter (R 345). There were times when Colonel Hatakayama ordered an exchange of shoes when it was found that the shoes worn by some PW's were damaged (R 345). During the winter of 1943 and 1944, Colonel Hatakayama, as a result of his inspection, ordered him to issue leather shoes to replace tabi shoes (R 346). When Colonel Emoto took command, the number of PW's who had tabi shoes exchanged for leather shoes was not so large (R 346). He did not believe that there was any instance where PW's did not have any shoes at all. The PW's were allowed to have their own shoes, but if they did not have their own shoes, they were issued the amount prescribed by regulations (R 346). The regulations provided that one of three types of shoes could be issued to PW's; namely, army shoes, tabi shoes and canvass shoes (R 348). According to the affiant's recollection the number of PW's who were wearing tabi shoes were 40 or 50 (R 348). There were 200 to 300 PW's at Hakodate and all were wearing leather shoes except 40 or 50 (R 348). The leather shoes that Colonel Emoto ordered him to issue to the PW's were in the warehouse at the time Colonel Hatakayama left his job (R 348). He thought that Colonel Hatakayama could have ordered the issue of these leather shoes to PW's. The leather shoes issued upon the order of Colonel Emoto were not the right size to fit the PW's, but they were able to wear them (R 349). In the winter of 1943 and 1944, tabi shoes were sent from the company and those PW's who were wearing damaged tabi shoes were issued army leather shoes to replace them (R 349). The number of tabi shoes received from the company in which the PW's were working was very small, that is in amount (R 349). He did not remember the number of leather shoes in the warehouse at the time Colonel Hatakayama departed but thought there was approximately 100 pair (R 349). Overalls, shirts, drawers, gloves, coats, trousers, puttees, overcoats, socks and caps were in the warehouse during the last months of Colonel Hatakayama's command. However, Colonel Emoto did not issue these items to all PW's but only to those who personally requested such issue in exchange for their old ones (R 349). There were not enough of these items in the storehouses to issue to all PW's (R 349)

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If he had to guess at the number of PW's who received these items from Colonel Emoto, he would guess 50 to 60 PW's (R 349). He was Intendence Officer at the main camp (R 350). In speaking of the number of PW's who received issue from Colonel Emoto, he was referring to those PW's in the main camp (R 350). He thought Colonel Emoto went to the branch camp and ordered the branch camp officers or Intendence non-commissioned officers to change some of these items that were issued to PW's. Usually supplies were issued by the army directly to the branch camps (R 350). The authority to receive or exchange an issue of supplies was in the hands of the branch camp commander (R 350). and in the hands of the main camp commander in the main camp (R 350). It was his duty to advise the main camp commander as to the necessity for exchange or issuance of supplies (R 350). He had requests from PW's for authority to exchange supplies or to get things issued (R 350). The only requests were made by the individuals themselves (R 350). He advised Colonel Hatakayama of these requests and in most cases the exchanges were made (R 351). If the prisoners' requests as to the issuance of clothes was justified there was no reason such a request should not have been granted and if such were the case Colonel Hatakayama did not refuse the request. PW's did individually ask to get leather shoes in exchange for tabi shoes during Colonel Hatakayama's command and they were issued to them (R 352). The reason for such issue was that the tabis they were wearing were damaged and could not be used any more (R 352). Colonel Hatakayama was the one who ordered more blankets issued than were authorized by regulations (R 353). The minimum amount of ration for one PW per day was set by regulations as 570 grams. The regulations further provided that, based on the condition of the PW's and the type of work done, 220 grams could be increased on top of this basic 570 grams. The order issued by Colonel Emoto was to increase the ration up to the maximum provided by the regulations (R 354). Colonel Hatakayama increased the rations from 100 to 150 grams and the ration that was being received by the PW's at the time Colonel Hatakayama was replaced by Colonel Emoto was 670 grams (R 355). He did not remember Colonel Emoto increasing the ration twice. He only remembered that as a result of the increase ordered by Colonel Emoto the amount became 770 grams (R 355). Colonel Emoto's order to increase food ration 220 grams was a 220-gram increase from the basic amount established by the regulations (R 355). He remembered that Colonel Emoto later on decreased the staple food ration (R 355). Although Colonel Emoto's increase did not go beyond the maximum authorized by the regulations, he did not know why Colonel Emoto thought himself obligated to decrease the food allowance (R 356). The increase of 100 grams in the food rationing was made immediately after Colonel Hatakayama's arrival; he thought it was in April 1943. The 100-gram increase of Colonel Hatakayama applied to all the PW's in the Hakodate area (R 356). There was no question in his mind that the amount of grams issued during Colonel Hatakayama's command from April or May 1943 was a minimum of 670 grams (R 356). The minimum ration of 670 grams was in effect until Colonel Hatakayama was transferred from the camp (R 357). There is no truth in the statement that all PW's needed clothing nor in the statement that no clothing was issued during the time of Hatakayama. There were a few PW's who were in need of clothing at the time Colonel Emoto took command, and these requested clothing from Colonel Emoto and received it (R 357). He could think of no reason why these men were not supplied with clothes under Colonel Hatakayama (R 357). He could not say why PW's who were supplied with clothes under Colonel Hatakayama made requests for more clothes under Colonel Emoto (R 358). Regardless of Colonel Emoto's testimony on the subject, the only thing that Colonel Emoto asked him was, "What was the maximum amount of staple food authorized by the regulations?" and he ordered him to increase the amount of food to the maximum prescribed by the regulations (R 359). He remembered having a conversation with Colonel Emoto regarding the maximum amount of staple food that could be issued to PW's according to regulations. However, he did not remember any conversation regarding an increase of 200 or 220 grams in the rations (R 361). He did not hear about any onions that rotted in one of the camp storage rooms (R 362). Prior to the arrival of Colonel Hatakayama and during the command of Captain Kawai, the amount of staple rations was 570 grams (R 362).

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Sadao Sakano, a witness for the defense, stated that he was assigned to the Hakodate Main Camp on 23 August 1943 (R 374). He reported to Colonel Hatakayama and received instructions as to the treatment of PW's (R 374). Colonel Hatakayama gave instructions on this subject whenever he had the opportunity to do so (R 374). Colonel Hatakayama did not reprimand him, but there were some in the camp who were given warnings because they beat PW's (R 374). Medical orderly Imai was warned and he heard that a person named Miumi received a warning. He was tried and convicted of beating a PW in May 1944. Colonel Emoto was the camp commander at that time (R 375). Colonel Emoto did not reprimand him for that beating (R 375). At the time that Miumi was reprimanded or warned was before he went to the POW camp (R 376). It was during the time that Colonel Hatakayama was camp commandant. Medical orderly Imai was warned by Colonel Hatakayama the latter part of 1943 or the early part of 1944 (R 376).

Tsutomu Shiba, a witness for the defense, stated that he was a doctor assigned to the Hakodate Main Camp from September 1, 1943 until the 20th of January 1945 (R 377). He served under both Colonel Hatakayama and Colonel Emoto (R 377). Colonel Emoto arrived at the Hakodate POW Camp around 2nd of March. A little while after his arrival he ordered the food increased in the main camp by 50 grams. About 10 days later he went to Kamiiso POW Camp and ordered another increase of 50 grams. He did this by wire (R 377). As well as he remembers PW's were receiving 670 grams of food under Colonel Hatakayama (R 377). He stated that upon his arrival at the camp Colonel Hatakayama instructed him as to his duties as medical officer in relation to the PW's (R 377). Colonel Hatakayama did not interfere with him as a medical officer in determining which PW's should be kept from work and which ones should go to work (R 378). He and the PW medical officer determined who should go to work and who shouldn't (R 378). He never did receive an order from Colonel Hatakayama which limited the amount of medicine to be used by sick PW's (R 378). Colonel Hatakayama visited the hospital 5 or 6 times a week (R 378). There was no difference in the policy of issuing medicine to sick PW's between Colonel Hatakayama and Colonel Emoto (R 378). The number of PW's who were kept from work under Colonel Emoto was not especially greater than those kept from work under Colonel Hatakayama. In his opinion there was sufficient medicine for the treatment of PW's at the Hakodate Camp (R 379). In addition to medicines gotten from the army, PW's received relief supplies which were issued to the PW's without limitations (R 379). At the time he assumed his duties under Colonel Hatakayama, approximately 30 or 40 PW's were in the hospital (R 380). The average number of patients per day for those in the hospital remained about the same as those under Colonel Emoto (R 380). Colonel Emoto reprimanded him for beating a PW while under the influence of sake (R 380). He was transferred from the Hakodate POW camp (R 380). As to Colonel Emoto's testimony about the medical situation at Muroran, he stated that he was told that Major Murray requested that sick call be conducted without the presence of the Japanese medical orderlies. Colonel Emoto told him that he approved of this and ordered him to conduct the sick call in that manner so he answered yes (R 380, 381, 382). The physical condition of the PW's improved during Colonel Emoto's command (R 383). There were less deaths under Colonel Emoto's command. The physical condition of the PW's was continually improving under the command of Colonel Hatakayama (R 383). Sick calls were conducted during the morning and during the evening, and in his absence the PW medical officer treated the PW's and decided whether or not they should stay in from work or go to work. The PW medical officer determined which PW's should be hospitalized (R 384). He stated that the medical orderlies were not allowed to make decisions against the wishes of the PW doctor as to what PW's should or should not go to work (R 384). He did not believe, nor did he ever hear from the PW doctor, during his absence the officer of the day made decisions as to which PW's should or should not go to work (R 384). There was an army regulation that all decisions had to be made by the Japanese personnel (R 384, 385). The regulation caused a hardship where decisions had to be made by a doctor (R 385). He discussed this situation with Colonel Hatakayama and Colonel Hatakayama told him to do as he had previously mentioned (R 385). As to who should make decisions about sending PW's to work, there was no particular change under Colonel Emoto than existed under Colonel Hatakayama (R 385). He talked to Major Murray, the PW doctor, in regard to medical matters and Major Murray told him that everything was going smoothly, but he did not say

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anything to him about the Japanese medical orderlies having supreme authority as to treatment of PW's and the issuance of medicine and as to whether sick PW's should or should not work (R 385, 386). As well as he remembered, the PW's weight increased or decreased as follows: during the months of October, November and December 1943, their weight increased from 62 to 72 kilograms each month. During the winter time in January, February and March, the weight increased about 65 kilograms; and in the months of March, April and May there was about 67 kilograms increase; and after that their weight increased from 65 to 67 kilograms (R 386). He meant that the figures were the average weight (R 386). In December 1943, due to the decrease in weight of the PW's the strong and healthy PW's were sent to Asano Cement which was No. 1 Dispatch Camp. In their place the sick and unhealthy were brought from Murroran Camp and placed in the main camp because the climate was much better in Hakodate. In the main camp there were better medical facilities and he and the camp commandant could give the weak and unhealthy better attention. They were brought from Murroran to improve their health (R 387). It was he who suggested to the camp commandant that the weak and unhealthy at Murroran camp should be brought in and replace the healthy that had been sent to No. 1 Dispatch camp. The camp commandant agreed with him (R 387). Regarding the question as to who should make the decisions concerning the sending of sick PW's to work, he discussed the problem with Colonel Hatakayama because of the regulation existing at the time that decisions should be made by Japanese personnel. He suggested to Colonel Hatakayama that he thought it was better for a doctor to make decisions on medical matters (R 388).

For the purpose of corroborating his testimony in the record as to the amount of food ration under the command of Colonel Hatakayama as against that ration under Colonel Emoto; as to the policy of Hatakayama regarding corporal punishment; as to inspections of the camp made by Hatakayama and as to Colonel Emoto's disregard of the regulations and investigation by the Kempei Tai (R 393), the defense offered Seiki Naganuma, a witness, who stated that he was presently confined in Sugamo Prison (R 394). He had been tried as a war criminal and sentenced to 25 years in prison (R 394). He arrived at the second branch camp of the Hakodate POW Camps on 1 December 1942 (R 394). This was before the time of Colonel Hatakayama (R 394). From the time Colonel Hatakayama came to the Hakodate POW camps and to the time he left he warned them about the treatment of PW's and gave them instructions on this subject (R 394). He was the camp commander of the second branch camp under Colonel Hatakayama (R 395). In the Spring of 1943, and during the time of Colonel Hatakayama, the food was increased 150 grams over the minimum in the second branch camp (R 395). Colonel Hatakayama came to the second branch camp on an inspection tour about once a month (R 395). Under Colonel Emoto he was a camp commander of the first dispatch camp and was also in charge of general affairs of the main camp (R 395). Immediately after Colonel Emoto's arrival he increased the food ration by 50 grams in the main camp. About a week later he increased the ration 50 grams in the second branch camp; consequently, in the second branch camp the result was an increase of 50 over the 150 grams that Colonel Hatakayama had previously increased (R 396). As well as he could recall the increases of food ration under Colonel Emoto was continued only for one or two months. The regulation was changed by the army which decreased the food ration (R 396). He was First Lieutenant under Colonel Emoto's regime (R 398). He did not know all the rules and regulations of the Ministry of War in regard to the treatment of the PW's but he did know them to a certain extent (R 398). He knew in general the rules and regulations handed down by the Northern District Army as to the treatment of PW's. During the time that he was General Affairs Officer for the Hakodate Main Camp there were violations of those rules and regulations to a certain extent by the camp commander (R 398). The rules and regulations were violated by the improvement and additions to the buildings. Additional food, other than that authorized by the regulations, was purchased from civilians. Every day supplies were purchased from civilians by the POW camp in violation of the regulations (R 398). He was at Hakodate branch camp No. 2 from the 1st of December 1942 until 19 April 1944 (R 400). Under Colonel Hatakayama, PW's were given three days rest a month (R 400). Upon Colonel Emoto's arrival he increased the rest period to four times a month. However, later an order was received from the Army and the rest days thereafter were two or three times a month (R 400). Colonel Hatakayama increased the food

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in April 1943 in the main camp. The amount of his increase continued until March of the following year (R 401). He believed that the request submitted by Captain Ziegler in April 1943 relative to PW's doing hazardous work and the production of iron ore being essential to the war effort was submitted to the War Ministry instead of to Colonel Hatakayama (R 401, 402). He passed the request through the main camp commander and had him send it to the War Ministry (R 402). He received a notice from Major General Hanada in charge of the Prisoner of War Information Bureau of the War Ministry that such a request could not be taken into consideration (R 402). That information came down through Colonel Hatakayama and then finally to him (R 402). He notified the PW's verbally of the contents of the message received from the War Ministry (R 402). He did not know about any answer that Colonel Hatakayama had given regarding the PW's petition. All he got from Colonel Hatakayama was the information sent down to him from the Information Bureau (R 403). He did not tell them that it was impossible to make such a petition, nor did he tell them that their requests were against orders and that strong measures would be taken against them (R 403). He did not remember that Colonel Hatakayama threatened the PW's with punishment because they submitted their requests (R 403). In April when Colonel Hatakayama increased the rations in the main camp, this increase only applied to the main camp. Previously his camp, branch camp No. 2, had already increased the rations. When he assumed command of branch camp No. 2, he received an order from the Army Headquarters that 600 grams of rice and 186 grams of barley would be supplied to PW's. He carried out this order. After that, Army Headquarters changed the order and provided that a minimum ration of 570 grams would be the basic allowance with authority to increase this by 220 grams. He did not receive this order and continued the ration of 786 grams. After the second order concerning food came out, the rations at the main camp were decreased to 570 grams, and in April Colonel Hatakayama increased it by 150 grams (R 404). As he stated before, the food ration increase in April by Colonel Hatakayama applied only to branch camp No. 1 and the main camp. As he stated before, his camp, branch camp No. 2, was already feeding a minimum of 786 grams (R 404). In September he received the order from Army Headquarters to reduce the ration to 570. He requested that the ration not be reduced to the minimum of 570 grams and Colonel Hatakayama complied with his request and increased the rations 150 grams over the minimum (R 405). The ration increase of 150 grams was in April 1943 (R 406). Previously in making statements about the increase he may have gotten the main camp and the branch camp mixed up. An increase in food ration was made in April at the main camp and at his branch camp it was in September (R 409).

At the request of the defense the court took judicial notice of the record of trial, Case Docket No. 57, Yasuda et al, and more particularly to the testimony of Sergeant Leonard C. Campbell, on pages 143, 144 and 145, who stated in substance that when Colonel Emoto took over the camps he assembled the entire camp on the parade ground and gave them a lengthy speech. This procedure was repeated once a month and sometimes more often. After his first speech he ordered PW's to write him their impressions of his talks. It appeared to the PW's that he was the kind of fellow who blew his own horn. The senior men in his group got together and decided that if they wrote letters to Emoto praising him they would receive better treatment and better food. Some of the PW's wrote uncomplimentary remarks, but to carry out the scheme those remarks were changed so that the letters would be complimentary. PW's were definitely ordered to write these letters and their name was checked off the roster when they turned it in (R 411, 412).

At the request of the defense the court took judicial notice of Case Docket No. 174, Miyakawa, and particularly the testimony of Leonard C. Campbell, page 36, who stated in substance that he knew of no order that gave the guards permission to slap the boys. In some instance, rather than accept confinement in the guardhouse as punishment, some of the PW's would ask for a beating rather than confinement in the guardhouse. However, the PW knew the guard who was going to beat him when he made the request and he knew what kind of beating he was going to get from that man. None of them ever requested a beating from the "Yankee Clipper." It wasn't worth it (R 413).

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At the request of the defense the court took judicial notice and had read into the record the Review Authority analysis of the evidence in Case Docket No. 45, Araki (R 413, 414, 415, 416, 417, 418, 419, 420, 421). The defense introduced into this Review for the purpose of showing that as pertains to Specification 6c and 6e there was not one iota of evidence that the accused Hatakayama had any knowledge of the incidents or that the accused Hatakayama did anything which might be construed as permitting those incidents to happen. Further to show that the accused Araki offered no defense and mitigation that he committed the incidents under orders or that the main camp commander or his superior knew of the incidents and permitted it (R 413, 421).

At the request of the defense the court took judicial notice of the record of trial, Case Docket No. 4, Hirate, the opinion of the Review Authority and analysis of evidence in that case (R 421, 422). The purpose of the defense in asking the court to take judicial notice of this record and Review is the same as stated above (Araki) (R 421). This record and review pertain to Specification 6b and 6d (Hatakayama).

For the purpose of showing the weight increase of PW's from the period of December 1942 to March 1944 and also for the purpose of showing the relation of the work percentage and the weight increase the defense offered in evidence its Exhibit A, Document S-B2 from the Prisoner of War Information Bureau (R 390).

For the purpose of showing the number of patients per day per thousand and its relation to the work percentage from the period of December 1942 to March 1944, defense offered as its Exhibit B, extracts from Document S-B2 from the Prisoner of War Information Bureau (R 391).

For the purpose of showing increases in ration allowances in the POW camps under the command of Colonel Hatakayama the defense offered as its Exhibit C a certified true copy of the Hakodate Camps' monthly report of April 1943, the original being in the files of the Prisoner of War Information Bureau (R 422).

For the purpose of showing the distribution of relief supplies at Hakodate POW Camps in February and March 1944, the defense offered its Exhibit D, a true extract from the official document (VA2), plan of distribution for February and March relief supplies (R 422).

For the purpose of showing that Japan had certain laws pertaining to all the resources of the country, such as doctors, medical supplies, medicines, foods, furniture, building construction, etc., the defense offered as its Exhibit E, the National Mobilization Law of Japan (R 424).

For the purpose of showing the conditions under which PW's were taken prisoners and their physical condition at the time, the defense offered as its Exhibit F, a certified true copy from pages 2348 to 2349, Volume 18 of the record of trial of United States versus Homma (R 425).

For the same purpose as aforementioned the defense offered as its Exhibit G, extracts from the testimony of various witnesses given in the case of United States versus Homma (R 426).

For the same purpose as heretofore mentioned, the defense introduced as its Exhibit H, an extract of the text of General MacArthur's message to Congress (R 426).

At the request of the defense, commission took judicial notice and had certain passages read, "Japanese Regulations for the Treatment of Prisoners of War", 1034, dated 31 March 1942 (R 427, 428, 429, 430).

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4. Opinion:

a. The accused was tried on six (6) specifications and twenty-three (23) sub-specifications. One hundred seventy-one (171) exhibits were introduced in the case and seventeen (17) witnesses testified. Incidents in four (4) POW camps are covered in the case.

b. The record is legally sufficient to support the finding of the commission except as hereinafter indicated. The commission was constituted by proper authority and had jurisdiction over the accused and over the offenses charged. There is no evidence that any of the accused were insane at the time of the commission of the alleged acts or at the time of trial. The accused was given a fair trial, was **aggressively defended and cooperated in his own defense.**

c. The accused elected to remain silent, which was **his** legal right. He is not required to establish his innocence. The burden of **proving** the accused guilty beyond a reasonable doubt rests always upon the prosecution. The accused heard the vast amount of compelling evidence against him, which was not rebutted by the defense. Had the accused been innocent of the offenses charged, he could have testified in denial thereof. Under SCAP rules the commission could draw such inference from his failure to testify as would seem fair and competent to a reasonable mind, after taking into consideration all the competent evidence in the case.

d. As to the charge, there is ample proof that the accused violated the laws and customs of war in that he failed in his duty as camp commander of Hakodate POW camps to protect and provide some of the necessities of life to American and Allied PW's entrusted to his care; in accordance with the terms of the Geneva Convention to which the Japanese government informed the Allied Powers that it would conform. Each specification, of which the accused was found guilty, alleges an offense, and each specification was substantially proved in part.

e. The proof was uncontradicted that Colonel Hatakayama assumed command of Hakodate POW camps 20 December 1942 and remained in command until 3 March 1944 (Ex. 1, 1a, 3, 4, 5, 6, 7, 1b, 15, 16, 18, 19, 20, 21, 25). As such camp commander, a duty was imposed upon him to protect PW's entrusted to his care and to provide them with certain necessities to insure their health and well-being. A failure on his part to carry out this duty within the realm of his ability subjects him to prosecution for violating the laws and customs of war. The doctrine of command responsibility, as pertains to war crimes, has been so ably and thoroughly discussed, both by the United States Supreme Court and in previous war crimes cases, that it is only necessary to cite some of those opinions in this review (Sec. 15, 16, 17, 18, Application Yamashita 66, S. Ct. 34; US vs Naguchi, Case Docket No. 181; US vs Kondo, Case Docket No. 281; US vs Oota et al, Case Docket No. 129).

f. As to Legal Sufficiency:

(1) Failing to Provide American and Allied Prisoners of War, at the Hakodate Main Camp, with Available Medical Supplies and Proper Medical Care and Attention (Specification 1):

This specification, as amended, charges a failure to provide available medical supplies. A wrongful withholding must be proved (compare Specification 1, Sato et al, Case Docket No. 77).

The accused is charged with aggravating the suffering and illness of numerous unnamed prisoners. In support of this omnibus specification, no evidence of a specific event described in another specification should be considered. Inquiry is further limited to cases caused by the failure of the camp commander to discharge his duty as to providing available medical supplies. As thus limited, in no instance does the evidence establish that the accused aggravated the suffering and illness of any PW, either by himself or by contributing to other factors.

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To constitute a violation of a duty, an act or failure to act must relate itself to a responsibility. In the case at hand, did the accused have a responsibility to provide something, or did he have a duty not to withhold it? Construing the word "available" in its common accepted meaning, it denotes that the medical supplies were at the disposal of the accused and were capable of being used advantageously. From the aforementioned, it can clearly be determined that the accused had no duty to provide the medical supplies, because the specification indicates they were available, but did have a duty to distribute them according to the needs of the PW's and not to withhold any medical supplies where their disposition and use would alleviate the sickness and suffering. The evidence fails to indicate what medical supplies, if any, were available to the accused or that he withheld any of these supplies when they were needed. Medical supplies were very scarce in Japan, and it is undisputed that the amount of such supplies furnished by higher headquarters was totally inadequate to treat the number of PW's in the camp. The evidence does not indicate that the accused failed to dispense and use those medical supplies that he was able to get. He even requested additional medical supplies, but was unable to get them.

Such evidence as has been presented, tending to indicate a refusal to provide available medical supplies or willful neglect in his duties, is hardly sufficient to warrant a conclusion beyond a reasonable doubt that the actions of the accused aggravated the illness and suffering of PW's as found by the commission. Therefore, the part of the specifications, having to do with available medical supplies, should be disapproved.

(2) Failing and Neglecting to Provide and Maintain Adequate Quarters, Heat, Food and Clothing to PW's at the Hakodate POW Camps (Specifications 2 and 5):

These specifications, as amended, charge a failure to provide and maintain adequate quarters, heat, food and clothing, availability and a wrongful withholding must be proved (compare Specification 1, Sato et al, Case Docket No. 77).

The accused is charged with causing illness and suffering of numerous unnamed prisoners. Inquiry is limited to those cases of illness and suffering caused by the failure of the camp commander (the accused) to discharge his duty as to quarters, heat, food and clothing. To constitute a violation of duty, an act or failure to act must relate itself to a responsibility. In the case at hand, did the accused have a responsibility to provide something, or did he have a duty not to withhold it?

The evidence fails to indicate that the accused had the responsibility to provide adequate quarters.

The Ministry of War determined matters concerning the residence of PW's, the opening and closing of POW camps. His office notified the commander of an army or the commander of a garrison, who administered the POW camps (Article 2, paragraph 2, Prisoner of War Regulations, R 430). The Hakodate camps were inspected by a representative of the Prisoner of War Information Bureau, together with a representative of the Northern District Army, prior to December 1942 and prior to the arrival of Colonel Hatakayama as camp commander (R 201, 202). In some instances the companies, who worked the PW's, furnished the buildings in which the PW's lived (R 307). The high commandant of a POW camp had no authority to repair or change the facilities of the camps when such work involved expense and labor. This had to be approved by higher headquarters (R 208, 218, 220). It is not expressly stated in the record, but inference can be drawn from the testimony, that all PW's in the Hakodate POW camps were dispatched for work purposes to industries and plants in the Hakodate Area, this being done under contract with the War Ministry. From the foregoing, it is definitely established, and the evidence is uncontradicted, that Colonel Hatakayama did not have the responsibility of selecting the POW camps, nor did he have the responsibility of approving their adequacy, this having been completed prior to his arrival. Therefore, being

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detailed as camp commander, he accepted the facilities as approved by higher authority. Whether they were adequate or inadequate was not for his decision. Even though he had no authority to repair or change the facilities of the camp, if such involved expense and labor, the evidence is uncontradicted that he requested the Wanashi Ironworks at Murroran to furnish material to improve the barracks (R 295). He requested the Japanese Ironworks at Kamiiso to furnish material to patch the barracks and for ceiling the barracks in order to keep the rooms warm. The companies did all they could to comply with these requests. However, there was a shortage of materials and the companies did as much as they could under the circumstances (R 300). He requested the Hakodate Dock Company limited that the emergency treatment room be enlarged so that PW's could be adequately treated (R 308). This request was granted. He also requested the company, working PW's at No. 1 Dispatch Camp, Kamiiso, to increase the facilities (R 320). He further requested them to install a filtering system in order for PW's to have adequate drinking water (R 320). The filtering system was completed in February 1944 (R 320). He further requested the same company to place a latrine closer to the worksite (R 320). The improvement of facilities at Kamiiso was started as a result of the efforts of Colonel Hatakayama, but was completed after he left the camp (R 320, 324). Thus it is established by uncontradicted testimony that, even though he was not responsible for the selection of the camp, he fulfilled his duty within his ability as camp commander to improve the facilities. The finding of guilty by the commission of this part of the specification should be disapproved.

The evidence does not indicate that the accused failed to provide adequate heat, or that he withheld that which was available. The accused had a duty to distribute fuel that was made available to him according to regulations pertaining to this subject laid down by higher headquarters, and to request the issuance of fuel allowed under the regulations. Prosecution's affidavits, in support of this part of the specification, are contradictory one to the other. It is impossible to determine from the affidavits the number of stoves that were furnished, or that the number furnished was inadequate. The complaint of the PW's was not so much as to the stoves available, but as to the shortage of fuel. The amount of heat necessary for an individual varies with the individual. Some require less heat than others. The size of the buildings, the number of stoves to heat such buildings and the amount of fuel available are items that must be taken into consideration in determining whether or not the heating facilities were adequate. Even were they determined, some individual might still complain that the heating facilities were inadequate. It is commonly known that the Japanese furnished their own soldiers with very little heating facilities. It is admitted, both by the prosecution and by the defense, that there was a shortage of coal and that it was rationed. The prosecution's own evidence establishes the fact that there was a shortage of coal and that it was rationed. There is not one scintilla of evidence in the record that adequate coal was available or that any available coal was withheld. Colonel Emoto, a prosecution witness, stated that he knew coal was rationed (R 129). He further stated that during his regime he violated regulations by increasing the quantity of coal, that he went by the "barometer" and not by regulations (R 129). He stated that he cut trees for fuel (R 130). But nowhere in his testimony does he state, nor the record reflect, that Colonel Hatakayama violated the regulations issued by his superiors pertaining to the consumption of coal or that he withheld any coal allowed PW's under regulations. Obviously it cannot be contended that a camp commander is under a duty to permit entry upon the private property of others to procure wood for heating purposes. Viewing the evidence as a whole, it is considered that the evidence of the prosecution is insufficient to sustain this part of the specification.

The record is legally sufficient to sustain a finding of guilty of that part of the specification pertaining to the accused's failure to provide and maintain adequate food and clothing.

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(3) Failing and Neglecting to Control and Restrain Members of his Command and Persons under his Supervision and Control by Permitting them to Commit Acts, Atrocities and other Offenses Against American and Allied PW's at the Hakodate Main Camp and other POW Camps in the Hakodate Area Specifications 3 and 3a-3j, inclusive, and Specifications 6 and 6a-6m, inclusive):

The defense contends that by use of the word "permitting" in specifications 3 and 6, there devolved a burden upon the prosecution to prove beyond a reasonable doubt that the accused had actual knowledge of the acts and atrocities committed by his subordinates, and after having such actual knowledge, failed to restrain said subordinates (R 178, 434).

The accused was charged under two specifications for his failure to discharge command responsibility to prevent the acts alleged in the sub-paragraphs in both specifications which pertain respectively to the beating and abusing of many American and Allied PW's by his subordinates. The word "permit" means "(1) to allow by tacit consent or by not hindering; take no steps to prevent; consent tacitly to; suffer; (2) to grant leave by express consent or authorization; empower expressly" (Words and Phrases Perm. Ed. Vol. 32, p 145, par. 2). By construing the meaning of the word "permit", it can be clearly seen that it does not denote actual knowledge. It is sufficient to prove that the accused either had actual knowledge or constructive knowledge. This doctrine, as pointed out before in this review, has been thoroughly discussed in past reviews. Under these specifications and sub-specifications, it is sought to hold the accused, Hatakayama, criminally liable for the unlawful acts of those under his command on the theory of command responsibility. To the accused Hatakayama's credit, be it said that it is not even claimed by the prosecution that he was ever personally guilty of any unlawful acts of cruelty to the PW's or ever participated in any cruelties to them. However, the record reveals that on one occasion, on or about 13-June 1943, the accused, Hatakayama, slapped PW Todd five or six times with his open hand on both sides of his face and then unhitched his sword in his scabbard and struck Private Todd about twice on the side of his body (Ex. 2-A). The proof further shows that the accused saw the mistreatment of a PW by Imai, one of his staff, in March or April, 1943 (Ex. 16). Many mistreatments by members of his staff were reported to him (Ex. 7, 11). And on many occasions he stood by and watched while PW's were severely beaten and was seen and heard to order his officers and guards to beat PW's (Ex. 4, p 3). The incident in March or April 1943 was shortly after he became camp commander, and while he stopped the mistreatment in this instance, he thereby received notice that mistreatment was occurring in the camp. Thereafter complaints were made to him about other mistreatment of PW's by members of the PW staff. Under the system of handling complaints in use by the accused, it could not be definitely established that he received actual knowledge that mistreatments were occurring. Under his system, no PW was allowed to talk to him personally or to lodge a complaint with him personally. The record shows that beatings and other mistreatments by members of his staff continued throughout his command and had he allowed PW's to report these incidents, he could very easily have found out that they were occurring. The record further shows that beatings and other mistreatments by members of his staff was so wide-spread and so frequent that he was charged with knowledge thereof (Yamashita vs Styer 66 Supreme Court Report 340). Even under defense's proof, all the accused, Hatakayama did to prevent recurrences of mistreatment was to advise each member of his staff, when they reported to him for duty, as to the treatment that PW's should receive with reference to punishment, and he, on two occasions, reprimanded a guilty staff member for mistreating a PW. After the accused had actual or constructive notice that the PW's were being mistreated by members of his staff, in performance of his duty to protect the PW's (Case No. 144, U.S.A. Matsumuro, and cases therein cited), the obligation devolved on him to adopt adequate measures to stop the mistreatment. The preventative measures adopted by him proved to be inadequate since after taking them the mistreatment continued. If he had not failed in his duty, there would have been no subsequent recurrences of the mistreatment. It is uncontradicted that Colonel Emoto, when he assumed command, took such stringent measures against his staff who perpetrated atrocities and mistreatment that the same practically ceased to exist.

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The probable and foreseeable consequences of his failure to adopt adequate preventive measures was the continued occurrence of such mistreatments; and under the law such failure was the proximate cause of each act of unlawful mistreatment thereafter occurring, for which the commander would be criminally liable (45 C.J. 911, 913; 68 ALR 1013).

5. Recommendations:

a. There were no petitions for clemency.

b. It is recommended:

(1) That only so much of the finding of guilty of Specification 1, as provides for failing to provide proper medical care and attention, be approved.

(2) That only so much of the finding of guilty of Specification 2, as pertains to failing and neglecting to provide food and clothing, be approved.

(3) That the finding of guilty of Specification 3 and Specifications 3b, 3c, 3d, 3e, 3f, 3g, 3h, 3i, and 3j be approved.

(4) That the finding of guilty of Specification 4 be approved.

(5) That only so much of the finding of guilty of Specification 5, that pertains to failing and neglecting to provide food and clothing, be approved.

(6) That the finding of guilty of Specification 6 and Specifications 6a, 6b, 6d, 6e, 6f, 6g, 6h, 6i, 6k, and 6m be approved.

(7) That only so much of the finding of guilty of Specification 6c as refers to Kuniichi Araki having unlawfully beaten the prisoner of war named therein be approved.

(8) The finding of guilty of the charge be approved.

(9) The accused was found guilty of permitting his subordinates to mistreat and abuse by beating and other forms of abuse of many PW's who were entrusted to his care. Many of the beatings were of a cruel and barbaric nature. The commission sentenced the accused to confinement at hard labor for a period of twelve (12) years. In view of the many atrocities committed under his command, it is considered that a sentence of twelve (12) years is inadequate, measured by like sentences for like offenses in other cases. However, it is recommended that it be approved.

(10) In accordance with the established policy, owing to the length of time the accused has been in confinement prior to the date of sentence, it is recommended that twenty-three (23) months of the sentence be remitted.

6. Action:

Attached hereto is a form of action designed to carry into effect the above recommendation.

WALTER P. RITCHIE
Lt. Colonel JAGC
Asst Staff Judge Advocate

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The use by counsel for both sides of improper personalities against each other is noted but no adverse effect upon the rights of the accused is discovered.

As to the allegations in Specifications 2 and 5, it is considered after a careful study of the record that there is adequate proof of a responsibility (and breach thereof) to provide reasonably adequate quarters plus heat, as charged, under the duty of the commander to protect his charges. Lack of ability to secure better facilities is a matter to be shown as a defense or in mitigation. Full attention was devoted to this feature by the accused's witnesses. Colonel Emoto, his successor, demonstrated, nevertheless, that furnishing such quarters and reasonable heat was recognized as a duty of the commander. His success in eliminating the deficiencies highlighted the failures of the accused in his responsibility (Ex 162, p 4; R 140).

Similar comment is applicable as to the charge in Specification 1 of failure to provide available medical supplies. By "to provide available medical supplies" is meant to furnish to those requiring them. Mere stocking of a warehouse is not providing medical supplies. They must reach their destination for their intended use. Certain of these supplies were on hand but were withheld (cf R 379 and review supra, pp 6, 7, 8) from the sick in the camp. It is a sequitur that when the sick fail to receive proper medicine their suffering and illness are aggravated.

In the light of this reasoning the undersigned is compelled to recommend approval of findings and the sentence less the death feature in Specification 6c.

As to Specification 6c, it was determined by the Supreme Commander in the Araki Case #45 that Araki was not criminally responsible for the death of Glover. The death feature therefor should be deleted by the action in this case from Specification 6c.

An alternate proposed action to implement these recommendations is attached.

ALLAN R. BROWNE
Lt Colonel, JAGC
Army Judge Advocate



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